A

# DIGEST OF INDIAN LAW CASES

CONTAINING

## HIGH COURT REPORTS

AND

## PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA, 1913,

WITH AN INDEX OF CASES,

BEING A SUPPLEMENT TO THE CONSOLIDATED DIGEST OF INDIAN LAW CASES, 1836—1909.

COMPILED UNDER THE ORDERS OF THE GOVERNMENT OF INDIA

BY

B. D. BOSE

OF THE INNER TEMPLE, BARRISTER-AT-LAW; ADVOCATE OF THE HIGH COURT, CALCUTTA, AND EDITOR OF THE INDIAN LAW REPORTS, CALCUTTA SERIES.

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# PREFACE.

THIS volume is published as a supplement to the new Consolidated Digest, 1836-1909. It contains the cases published in the four series of the Indian Law Reports, the Law Reports, Indian Appeals and the Calcutta Weekly Notes, for the year 1913.

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For easy reference, several words and phrases, which are expounded in the judgments digested in this volume, are given in a separate list, in alphabetical order, under the heading "Words and Phrases."

B. D. BOSE.

HIGH COURT, CALCUTTA:
*The 10th July, 1914.*

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# ANNUAL DIGEST

OF

# THE HIGH COURT REPORTS

AND OF

# THE PRIVY COUNCIL REPORTS OF APPEALS FROM INDIA,

1913.

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## A

**ABANDONMENT.**

*See* LANDLORD AND TENANT.
I. L. R 40 Calc. 870

*See* TRADE-MARK.
I. L. R. 40 Calc. 814

**ABATEMENT OF RENT.**

*See* MINING LEASE . L. R. 40 I. A. 223

**ABKARI ACT (BOM. V OF 1878).**

———— ss 16, 43—*License under the Act to sell country liquor—Prohibition to sell, transfer or sub-let the licensee's right—Partnership not prohibited.* Defendant 1 obtained a license under the Abkari Act (Bom. Act V of 1878) to sell country liquor. One of the conditions of the license was that the "licensee shall not sell, transfer to another person, or sub-let his right to sell country liquor obtained under the license and he shall enter into no *kabuliyat* for the exercise of the said right, which, in the opinion of the Collector, is of the nature of a sub-lease." By the preamble of the license the licensee was given, subject to the conditions expressed subsequently, an exclusive right to sell country liquor in the shop for one year from the 1st April 1904. After obtaining the license the defendants admitted the (deceased) plaintiff as a partner in the business and the latter brought a suit for an account of what was due upon the partnership. A question having arisen as to whether the contract for partnership was forbidden by law and opposed to the policy and general tenor of the Act and, therefore, not enforceable in a Court of law. *Held*, that the omission in the license sanctioned by Government in the year 1903 of all reference to the question of sub-letting a part of the right to vend or of admitting persons into the business only pointed to the inference

**ABKARI ACT (BOM. V OF 1878)—*contd.***

———— s 16—*contd.*

that the Abkari authorities had decided not to prohibit the taking up of other persons into partnership in the profits derived from the selling of liquor under an Abkari license. KARSAN *v.* GATLU SHIVAJI (1912) . . I. L. R. 37 Bom. 320

———— ss. 32, 67—*License to sell country liquor—Collector suspending and cancelling the license—Suit against Government by licensee for damages—Filing of the suit after the allowed period—Collector's action done bonâ fide—Liability to be sued—Acts done in performance of statutory duties.* The plaintiff was granted a license to sell country liquor for the year beginning with the 1st April 1910, on his executing an agreement, under s. 31 of the Abkari Act (Bombay Act V of 1878), on the 14th March 1910. The Collector informed the plaintiff on the 31st March 1910, that his license was suspended; and on the 6th of April following, he intimated to the plaintiff that the license was cancelled on the ground that he suspected that the plaintiff had given secret bribes to the Collector's Head Clerk. The plaintiff appealed against this order, first to the Commissioner and then to Government, but in each case was unsuccessful. On the 30th March 1911, the plaintiff filed the present suit against Government to recover damages consequent upon the cancellation of his license. The lower Court dismissed the suit as barred by the provisions of s. 67 of the Bombay Abkari Act (Bombay Act V of 1878), first, because the Collector has acted *bonâ fide* in pursuance of the Act, and secondly because the suit was not instituted within four months from the date of the Act complained of. On appeal: *Held*, that the Act complained of being the Collector's Act of revoking the plaintiff's license on the 31st March 1910, the suit was instituted beyond the time-limit prescribed by s. 67 of the Abkari

**ABKARI ACT (BOM. V OF 1878)**—*concld*

——— s. 32—*contd.*

Act (Bombay Abkari Act V of 1878). *Held*, further, that section 67 barred the suit, inasmuch as the Collector had done the act *bonâ fide* and in pursuance of the statute. *Per Curiam*: If any public or private body charged with the execution of a statute honestly intends to put the law in motion and really and not unreasonably believes in the existence of facts, which, if existent, would justify his acting and acts accordingly, his conduct will be in pursuance of the statute and will be protected *Hermann* v. *Seneschal, 32 L. J. C. P. 43, and Spooner* v. *Juddow, 4 Moo I. A. 353.* followed. DHONDU DAGDU *v* SECRETARY OF STATE FOR INDIA (1912).

**I. L. R. 37 Bom. 101**

——— s. 43.

*See* WADHWAN CIVIL STATION.

**I. L. R. 37 Bom. 152**

**ABWAB.**

——— *Illegal cess— Rent—Bengal Tenancy Act (VIII of 1885), s 74—Regulation VIII of 1793, ss. 54 and 55—Contract.* If, upon a fair interpretation of the terms of the contract, the sum claimed can be deemed part of the actual rent, the tenant is bound to pay it; if, on the other hand, the sum claimed can only be regarded as an imposition in addition to the actual rent, the stipulation for its payment is void. Under a lease of certain lands the yearly rent was specified as assessed at a certain rate, and at the end of the lease, in a clause entirely distinct from the one wherein the rent was assessed, a provision was made for the delivery of husk, which was not expressly or by implication made part of the rent The plaintiffs brought a suit for arrears of rent on the basis of this lease, claiming a deduction of a certain sum of money for unculturable lands, and seeking to recover arrears of rent besides husk. They further claimed cesses upon the amount stated to be rent, and not upon the amount claimed as price of the husk: *Held*, that the sum claimed as the value of the husk did not form part of the consolidated rent, but was an independent item falling within the description of an imposition in addition to the actual rent. *Sonnum Sookul* v. *Shaikh Elahee Buksh, 7 W.R. 453, Raj Narain Mitra* v. *Panna Chand Singh, 7 C. W. N. 203, Gayratulla Sardar* v *Girish Chandra Bhaumick, 12 C. W. N 175, Krishna Chandra Sen* v. *Susila Soondary Dassee, I L.R. 26 Calc. 611, Sreekanta Prasad* v. *Irshad Ali Sircar, 16 C. L. J. 225,* approved. *Radha Charan Ray Chaudhury* v. *Golak Chandra Ghose, I L. R. 31 Calc. 834,* distinguished. *Talukhdari Singh* v. *Chulhan Mahton, I.L.R. 17 Calc. 131, Radha Prasad Singh* v. *Bal Kowar Koeri, I.L.R. 17 Calc. 726,* referred to. MATHURA PRASAD *v.* TOTA SINGH (1912) . . **I. L. R. 40 Calc. 806**

**ACCOUNT.**

*See* PARTNERSHIP **I. L. R. 37 Bom. 158**

**ACCOUNT**—*concld.*

——— suit for—

*See* COMMON MANAGER.

**I. L. R. 40 Calc. 150**

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s 15 B.

**I. L. R. 37 Bom. 614**

——— *Principal and Agent—Proprietor appointed by the co-proprietors as Common Manager for payment of joint debts, whether an agent of the latter and of the heirs of a deceased proprietor—Limitation—Limitation Act (IX of 1908), Sch. I, Art. 89—Plea of Limitation under the Act taken on remand after previous unsuccessful plea of limitation under Act VIII of 1869, s. 30.* A proprietor appointed by the other co-proprietors of an estate as common manager thereof, for the purpose of realizing its profits and appropriating them to the payment of their joint debt, is an agent of the other proprietors and of the legal representatives of a proprietor since deceased within Art 89 of the Limitation Act (IX of 1908), and the period of limitation of a suit for accounts brought by the latter against such manager is governed thereby. Where repeated demands for accounts were alleged in the plaint to have been made, but the dates were not mentioned nor proved, and the demands appeared to have continued to the termination of the agency, it was *held* that limitation commenced to run from the date of the termination of the agency A plea of limitation under the Limitation Act may be raised on the hearing after the remand of a case by the High Court notwithstanding the failure of a similar plea taken only under s 30 of Act VIII 1869 on the first hearing in the Court below. CHANDRA MADHAB BARUA *v.* NOBIN CHANDRA BARUA (1912).

**I. L. R. 40 Calc. 108**

**ACCRETION.**

——— *Island formed in the mouth of a river subsequently becoming joined to the mainland, ownership of.* Where an island is formed in the mouth of a river, which subsequently becomes part of the mainland through the drying up of the intervening channel, the increase being perceptible or sudden, the land which formed the island is not an accretion to the mainland but merely an "adjunction" and the owner of the mainland obtains no proprietary rights therein as against Government. SURIYA RAO BAHADUR *v.* THE SECRETARY OF STATE FOR INDIA (1913) . . . . **I. L. R. 36 Mad. 57**

**ACCUSED.**

——— statement by—

*See* DEFAMATION **I. L. R. 40 Calc. 433**

**ACKNOWLEDGMENT.**

*See* LIMITATION ACT (XV OF 1877), s. 19 AND SCH. II, ART. 148.

**I. L. R. 35 All. 227**

**ACKNOWLEDGMENT**—*concld.*

*See* LIMITATION ACT (IX OF 1908), s. 19. I. L. R. 35 All. 437

*See* REGISTRATION ACT (III OF 1877), s. 17 (*n*). I. L. R. 35 All 202

*See* STAMP ACT (II OF 1899), ss. 2 (*23*), 62 AND 63 . I. L. R. 35 All. 290

**ACQUIESCENCE.**

*See* ADVERSE POSSESSION I. L. R. 40 Calc. 173

*See* HINDU LAW—ALIENATION. I. L. R. 40 Calc. 966

**ACT.**

——— 1846—I.

*See* PLEADERS ACT

——— 1850—XXI.

*See* REMOVAL OF CASTE DISABILITIES ACT.

——— 1856—XV.

*See* HINDU WIDOWS' REMARRIAGE ACT.

——— 1859—XI.

*See* REVENUE SALE LAW

*See* SALE FOR ARREARS OF REVENUE.

——— 1859—XIII.

*See* WORKMEN'S BREACH OF CONTRACT ACT

——— 1859—XIV.

*See* LIMITATION ACT, 1859.

——— 1860—XLV.

*See* PENAL CODE.

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*See* POLICE ACT.

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*See* RELIGIOUS ENDOWMENTS ACT.

——— 1864—II.

*See* ADEN COURTS ACT.

——— 1865—III.

*See* CARRIERS ACT.

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*See* SUCCESSION ACT.

——— 1869—IV.

*See* DIVORCE ACT.

——— 1870—VII.

*See* COURT-FEES ACT.

——— 1870—XXI.

*See* HINDU WILLS ACT.

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——— 1871—IX

*See* LIMITATION ACT, 1871.

——— 1871—XXIII.

*See* PENSIONS ACT.

——— 1872—I

*See* EVIDENCE ACT.

——— 1872—IX.

*See* CONTRACT ACT.

——— 1873—X.

*See* OATHS ACT.

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*See* MARRIED WOMEN'S PROPERTY ACT.

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*See* MAJORITY ACT.

——— 1877—I.

*See* SPECIFIC RELIEF ACT.

——— 1877—III

*See* REGISTRATION ACT.

——— 1877—XV.

*See* LIMITATION ACT, 1877.

——— 1878—XI.

*See* ARMS ACT.

——— 1879—XVIII.

*See* LEGAL PRACTITIONERS ACT.

——— 1881—V.

*See* PROBATE AND ADMINISTRATION ACT.

——— 1881—XVIII.

*See* CENTRAL PROVINCES LAND REVENUE ACT.

——— 1882—II.

*See* TRUSTS ACT.

——— 1882—IV.

*See* TRANSFER OF PROPERTY ACT.

——— 1882—V.

*See* EASEMENTS ACT.

——— 1882—VI.

*See* COMPANIES ACT.

——— 1882—XIV.

*See* CIVIL PROCEDURE CODE, 1882.

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*See* BENGAL TENANCY ACT.

——— 1885—XVII.

*See* CENTRAL PROVINCES GOVERNMENT WARDS ACT.

**ACT**—*contd.*

——— **1886—II.**

*See* INCOME-TAX ACT.

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*See* SUITS' VALUATION ACT.

——— **1887—IX.**

*See* PROVINCIAL SMALL CAUSE COURTS ACT.

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*See* CIVIL COURTS ACT.

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*See* PUNJAB LAND REVENUE ACT.

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*See* MERCHANDISE MARKS ACT.

——— **1889—VII.**

*See* SUCCESSION CERTIFICATE ACT.

——— **1890—VIII.**

*See* GUARDIANS AND WARDS ACT.

——— **1890—IX.**

*See* RAILWAYS ACT.

——— **1890—XI.**

*See* PREVENTION OF CRUELTY TO ANIMALS ACT.

——— **1893—IV.**

*See* PARTITION ACT.

——— **1894—I**

*See* LAND ACQUISITION ACT.

——— **1897—X.**

*See* GENERAL CLAUSES ACT.

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*See* PETROLEUM ACT.

——— **1899—IX.**

*See* ARBITRATION ACT.

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*See* TRANSFER OF PROPERTY AMENDMENT ACT.

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——— **1907—III.**

*See* PROVINCIAL INSOLVENCY ACT.

——— **1908—V.**

*See* CIVIL PROCEDURE CODE, 1908.

——— **1908—IX.**

*See* LIMITATION ACT.

——— **1908—XVI.**

*See* REGISTRATION ACT, 1908.

——— **1909—III.**

*See* PRESIDENCY TOWNS INSOLVENCY ACT.

——— **1910—I.**

*See* PRESS ACT.

——— **1912—V.**

*See* PROVIDENT INSURANCE SOCIETIES ACT.

——— **1912 VI.**

*See* LIFE ASSURANCE COMPANIES ACT.

**ACTIONABLE CLAIM.**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900), S. 130 **I. L. R. 37 Bom. 198**

**ADEN COURTS ACT (II OF 1864).**

——— **s. 3.**

*See* DIVORCE ACT (IV OF 1869)), s. 3 (2). **I L. R. 37 Bom. 57**

**ADEN POLITICAL RESIDENT.**

*See* DIVORCE ACT (IV OF 1869), s. 3 (2). **I. L. R. 37 Bom 57**

**ADJUDICATION.**

*See* PROVINCIAL INSOLVENCY ACT. **I. L. R. 36 Mad. 402**

**ADJUDICATION ORDER.**

——— **effect of—**

*See* INSOLVENCY . **I. L. R. 40 Calc. 78**

**ADMINISTRATION.**

——— *Court-fees—Inventory—Proceedings to amend Valuation—Limitation—Probate and Administration Act (V of 1881), s. 98—Court-fees Amendment Act (XI of 1899), s. 19 H, sub-s. (4).* The six months within which the Collector may move under the Court-fees Amendment Act, s. 19 H, to obtain an amended valuation of an estate in respect of which letters of administration have been granted, runs from the date of the exhibition of an inventory to satisfy the Probate and Administration Act, 1881, s. 98, and from the date when the District Judge holds that a sufficient inventory has been exhibited. Documents filed in another suit can

**ADMINISTRATION**—*concld.*

not be taken in conjunction with lists exhibited by an administratrix for the purpose of constituting a sufficient inventory. RAMESHWAR KUMAR *v.* COLLECTOR OF GAYA (1913)
**I. L. R. 40 I. A. 236**

**ADMINISTRATORS.**

——— disagreement between—

*See* LETTERS OF ADMINISTRATION.
**I. L. R. 40 Calc. 50**

**ADOPTED SON.**

*See* HINDU LAW—ALIENATION.
**I. L. R. 40 Calc. 966**

*See* PARTIES—RELIGIOUS ENDOWMENT.
**I. L. R. 40 Calc. 323**

**ADOPTION.**

*See* HINDU LAW **I. L. R. 37 Bom. 598**

*See* HINDU LAW—ADOPTION.

*See* HINDU LAW—ADOPTION.
**I. L. R. 37 Bom. 107**

*See* HINDU LAW—ADOPTION.
**I. L. R. 37 Bom. 951**

*See* LIMITATION ACT (IX OF 1908), SCH I, ART. 118.
**I. L. R. 37 Bom. 513**

*See* NAIKINS . **I. L. R. 37 Bom. 116**

——— *Agarwal Banias of Zira, Punjab—Custom—Adopted person, an orphan and married—Adoption by declaration of adoption and subsequent treatment of adoptee as adopted son—Privy Council, practice of—Concurrent decisions on fact.* In this case in which the plaintiff sued for a declaration of his adoption, the parties were Agarwal Banias of Zira in the Punjab and the plaintiff being an orphan and married, the validity of the adoption if made, depended upon whether they were governed by custom or by the Hindu law. Their Lordships of the Judicial Committee considered that the Courts below had concurrently found that among the class to which the parties belonged the rules of Hindu Law as to adoption did not apply, and that by the custom applicable to that class an unequivocal declaration by the adopting father that a boy had been adopted and the subsequent treatment of that boy as the adopted son, was sufficient to constitute a valid adoption; and that, in fact, the defendant had so adopted the plaintiff and treated him as his adopted son. In accordance, therefore, with the usual practice as to such concurrent decisions: *Held*, that the adoption had been established. Owing, however, to the limited nature of the evidence as to custom among the Agarwal Banias of Zira, the effect of the decision should be confined to the particular circumstances of the case. CHIMAN LAL *v.* HARI CHAND (1913) . . **I. L. R. 40 Calc. 879**

**ADVERSE POSSESSION.**

*See* GUJARAT TALUKDARS' ACT (BOM. ACT VI OF 1888), S. 31.
**I. L. R. 37 Bom. 380**

**ADVERSE POSSESSION**—*contd.*

*See* HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), SS. 11, 11A.
**I. L. R. 37 Bom. 87**

*See* LIMITATION.
**I. L. R. 37 Bom. 224, 231**

*See* LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 127, 142.
**I. L. R. 37 Bom. 84**

1. ——— *Ghatwali tenure—Non-payment, or discontinuance of payment of rent—Estoppel—Acquiescence—Misrepresentation—Grantor and grantee—Homestead land—Sale by the Collector under the Public Demands Recovery Act (XI of 1859)—Sale-certificate—Title of auction purchaser—Limitation Act (IX of 1908), s. 2 (8). Sch I, Art. 144—Transfer of Property Act (IV of 1882), s. 43—Evidence Act (I of 1872), s. 115.* At an execution sale under the Public Demands Recovery Act, the right, title and interest in a certain homestead land forming part of a *ghatwali* tenure was sold in 1878 by the Collector. In the sale-certificate granted to the auction-purchaser the land was described as rent-free, and, as a matter of fact, no rent was ever paid to the *ghatwal* or anybody by the judgment-debtor, or after him, by the auction-purchaser. In 1888 the plaintiff, and infant of 4 years of age, succeeded as *ghatwal* on the relinquishment of the office by his father. Thereafter, by an agreement between the young *ghatwal*, the Maharajah of Burdwan, who was the superior zemindar, and the Government, the young *ghatwal* relinquished the office on condition that the property should be treated as resumed by the State to be settled permanently with the Maharajah, by whom it would be granted in *mokarari* to the retiring *ghatwal*. This arrangement was carried out and in 1895 the plaintiff obtained the *mokarari* settlement from the Maharajah. In 1902 the plaintiff attained majority, and in 1904 he brought a suit to eject the representatives of the auction-purchaser from the homestead land and to recover possession of the same. *Held*, that mere non-payment of rent or discontinuance of payment of rent did not by itself constitute adverse possession. *Madan Mohan Gossain* v *Kumar Rameswar Malia*, *7 C. L. J. 615*, *Troyluckha Tarinee Dossia* v. *Mohima Chunder Muttuck*, *7 W R. 400*, *Rungo Lall Mundal* v. *Abdool Guffor*, *I. L. R. 4 Calc. 314*, *Poresh Narain Roy* v. *Kassi Chunder Talukdar*, *I. L. R 4 Calc. 661*, *Musyatulla* v. *Noorzahan*, *I. L R 9 Calc. 808*, *Prem Sukh Das* v. *Bhupia*, *I. L. R. 2 All. 517*, referred to. *Held*, also that in a suit of this description Article 144 of the Limitation Act must be applied, and the plaintiff as *ghatwal* did not claim through his father as his predecessor within the meaning of section 2 of the Limitation Act *Ram Chander Singh* v. *Madho Kumari*, *I. L. R. 12 Calc. 484*; *L. R. 12 I. A., 188*, referred to. *Held*, further, that the plaintiff, when he succeeded as *ghatwal*, was an infant, and as he commenced the present suit within three years from the attainment of majority, the plea of limitation could not be sustained. *Held*

**ADVERSE POSSESSION**—*concld.*

further, that no title by estoppel accrued in favour of the purchase at the certificate sale. There was no estoppel in this case as against the decree holder, and the appellants, as representatives of the purchaser at the certificate sale, could not avail themselves of any possible estoppel against the Secretary of State or against the plaintiff as grantee from him through the Maharajah of Burdwan. *Held*, further, that even if there had been any estoppel available against the Secretary of State, there could have been none against the plaintiff, none was created by reason of what happened in 1888, because the estate did not then vest in the Crown to be granted afresh to the plaintiff, nor was any created by reason of what happened in 1895, because the so-called after-acquired title of the Secretary of State was acquired by him on condition that a clear title would be granted to the Maharajah of Burdwan as zemindar and to the plaintiff as *mokararidar* under him The doctrine of estoppel does not apply where an after-acquired title is taken by the grantor under a conveyance made to him as a conduit and for the purpose of vesting the title in a third person. PRASANNA KUMAR MOOKERJEE *v.* SRIKANTHA ROUT (1912).

**I. L. R. 40 Calc. 173**

**2.** ——— *Hypothecation—Stranger in adverse possession for 12 years as against mortgagor—Effect of, on mortgagee's rights—Payments of interest and acknowledgment by mortgagor, effect of.* Adverse possession by a stranger for more than 12 years of a property, which is subject to a hypothecation not only extinguishes the rights of the mortgagor but bars also those of the mortgagee, though the rights of the mortgagee may have been kept alive by payments or acknowledgments made by the mortgagor. *Prannath Roy Chowdry* v. *Rookea Begum*, *7 Moo. I A 323, 355*, *Karan Singh* v *Bakar Ali Khan*, *I L R. 5 All 1*, *Ammu* v. *Ramakrishna Sastri*, *I. L. R. 2 Mad. 226, 229*, *Ram Coomar Sein* v. *Prossunno Coomar Sein*, *1. W. R 375*, and *Sheoumber Sahoo* v *Bhouanee deen Kulwar*, *2 N. W. P. H C. 223*, followed. *Aimadar Mandal* v. *Makhan Lal Day*, *1 L. R. 33 Calc. 1015*, and *Second Appeal No 682 of 1909* (unreported), not followed. *Heath* v. *Pugh*, *L R 6 Q. B. D 345*, and *on appeal Pugh* v *Heath*, *L. R. 7 A. C. 235*, distinguished. *Per* CURIAM. The rights of the mortgagee would be extinguished in such a case even where he is not entitled to possession under the mortgage, as the mortgagee is not without remedy against the trespasser and could protect his interests by proper proceedings. A mortgage is merely a security for the debt and a mortgagee's right is to sell the interest of the mortgagor in the land and a mortgage decree under which the land is attempted to be sold cannot bind persons who do not derive their title from the mortgagor and were not parties to the suit in which the mortgage decree was passed but claim a statutory title adversely to the mortgagor. RAMASWAMI CHETTI *v.* PONNA PADAYACHI (1913).

**I. L. R. 36 Mad. 97**

**AGARWAL BANIAS OF ZIRA.**

*See* ADOPTION . **I. L. R. 40 Calc. 879**

**AGENT.**

*See* ACCOUNT, SUIT FOR
**I. L. R. 40 Calc. 108**

**AGGREGATE OF SENTENCES.**

*See* APPEAL . **I. L. R. 40 Calc. 631**

*See* CRIMINAL PROCEDURE CODE, SS. 35, 408 . . **I. L. R. 35 All. 154**

**AGRA TENANCY ACT (II OF 1901).**

——— **s. 4, Ch. X**—"*Land*"—*Resumption of rent-free grants—Grove-land—Suit for resumption of grove-land not maintainable in Revenue Court. Held*, that grove-land not being "land held for agricultural purposes" within the meaning of s. 4 (2) of the Agra Tenancy Act, 1901, nor, "land" within the meaning of Chapter X of the Act, no suit will lie in a Revenue Court for resumption of rent-free grant of grove-land. *Sheomangal* v. *Sardar Singh*, *6 A L J 749*, and *Megh Singh* v *Nasar Fatima*, *Select decisions of 1911*, *No. 4*, referred to. HADI HASAN KHAN *v.* PATI RAM (1913) . . **I. L. R. 35 All. 200**

——— **ss. 11, et seq.**—*Occupancy holding—Mahant—Mahant capable of acquiring occupancy rights for the benefit of the math which he represents. Held*, that the Mahant of a *math*, just as much as any other tenant who holds for his own personal benefit, can acquire occupancy rights under the provisions of the Agra Tenancy Act, 1901, for the benefit of the *math* which he represents. PARMANAND SINGH *v.* MAHANT RAMANAND GIR.

**I. L. R. 35 All. 474**

——— **s. 20**—*Occupancy holding—Mortgage—Sub-mortgage by mortgagee of occupancy holding—Rights of sub-mortgagees.* Where the usufructuary mortgagee of an occupancy holding purported to sub-mortgage his mortgagee rights. *Held*, that the sub-mortgagees were entitled to a money decree against their sub-mortgagor for the money advanced by them. BALGOBIND BHAGAT *v* NAGINA MISIR (1913) . **I. L. R. 35 All. 405**

——— **ss. 28, 29, 30, 34**—*Exproprietary tenant—Mortgagee from exproprietary tenant holding over after ejectment of mortgagor—Rent not fixed by agreement or by a decree of the Court—Right of zamindar to recover rent.* *G* and *H* were Zamindars who owned some *sir* land and an occupancy holding. They executed a usufructuary mortgage of their *sir* land and occupancy holding in favour of *K* and the predecessor of *J*. In execution of a money decree against *G* and *H* their zamindari rights were sold and *P* purchased the same. Subsequently, in execution of a decree for arrears of rent, *P* got *G* and *H* ejected by the Revenue Court. Later on *P* got *K* and *J* the mortgagees also ejected by the Revenue Court. *P* then brought a suit against *K* and *J* for arrears of rent for the period between the ejectment of *G* and *H* and their own ejectment. *Held* that *P*

**AGRA TENANCY ACT (II OF 1901)—** *contd.*

——— s. 28—*concld.*

was not entitled to recover the rent in regard to the period of time between the two ejectments as the rent had not been fixed either by agreement between the parties or by a decree of Court KAMTA PRASAD *v* PANNA LAL (1912) . **I. L. R. 35 All. 123**

——— s. 34—*Defendant in possession of land without consent of owner—Ejectment of defendant through Revenue Court—Subsequent suit for rent—Cause of action—Misjoinder of causes of action—Civil Procedure Code, 1908, Order II, rule 2* On a partition of certain revenue-paying property some land which fell to the plaintiff's share remained in possession of the defendant, who refused to vacate it. The plaintiff sued the defendant for ejectment in the Revenue Court The defendant pleaded that he was an ex-proprietary tenant, but the Court held him to be a non-occupancy tenant and ejected him. The plaintiff then brought the present suit under s. 34 of the Agra Tenancy Act, 1901, for rent of the land held by the defendant during the period prior to his ejectment as land occupied by the defendant without the plaintiff's consent. *Held*, that the defendant, being in occupation of the land without the consent of the plaintiff, was liable to pay rent therefor, under s. 34 of the Agra Tenancy Act, and further that the claim could be maintained notwithstanding that the defendant was not in possession at the date of the suit. *Sheo Gopal Pande* v *Thakur Baldeo Singh, 8 All L. J. 1087*, distinguished. *Held*, further, that the suit was not barred by reason of the plaintiff having in his previous suit for ejectment treated the defendant as a tenant. *Held*, also, that the plaintiff's cause of action under s. 34 of the Agra Tenancy Act was no part of his cause of action to recover possession of the property, and could not be joined in the previous suit, and the present suit was, therefore, not barred by the provisions of the Code of Civil Procedure, O. II, r. 2. NANDAN SINGH *v* GANGA PRASAD (1913) . . . . **I. L. R. 35 All. 512**

——— ss 58, 200—*Appeal—Question of proprietary title—Defendants setting up a title as mortgagees of the proprietary rights* In a suit for ejectment under s 58 of the Agra Tenancy Act, 1901, the defendants pleaded that they were not tenants but mortgagees of the proprietary rights of which the plaintiff was alleged to be the purchaser of the equity of redemption. *Held*, that this amounted to a distinct claiming of a proprietary title or at least of a portion of the bundle of rights which go to make up a proprietary title and the appeal would lie to the District Judge. KALYAN MAL *v.* SAMAND (1913). **I. L. R. 35 All. 157**

——— ss. 79, 95—*Jurisdiction—Landholder and tenant—Occupancy holding—Suit for declaration that plaintiff is heir of deceased occupancy tenant and for possession of holding—Practice—Useless declaration refused.* The son of a deceased occupancy tenant filed a suit against the zamindar in the civil Court (i) to have it declared that he was the son and lawful heir of the late tenant, and (ii) for possession of the occupancy holding held by him. The plaintiff had been ejected more than two years before suit *Held*, that although so far as the first relief claimed was concerned the suit might be cognizable by a Civil Court, so far as the second relief was concerned the plaintiff's remedy was by suit under s. 79 of the Agra Tenancy Act, and, inasmuch as the time for filing such a suit had long since expired, there was no object to be gained by granting the first relief. The entire suit was accordingly dismissed. *Dori Lal* v. *Sardar Singh, 5 All. L. J 514*, referred to. BIRHAM KHUSHAL *v.* SUMERA (1913). **I. L. R. 35 All. 299**

**AGRA TENANCY ACT (II OF 1901)—** *concld.*

——— s. 79—*concld.*

——— s. 95—*Civil and Revenue Courts—Jurisdiction—Dispute between two rival claimants to a tenancy Held*, that the question of title to a tenancy arising between rival claimants to that tenancy is a question which is cognizable by a Civil Court and is not a matter coming within the purview of s. 95 of the Agra Tenancy Act, 1901. *Bhup* v. *Ram Lal, I. L. R. 33 All. 795*, followed. *Zubeda Bibi* v. *Sheo Charan, I L R. 22 All 83*, and *Hamid Ali Shah* v. *Wilayat Ali, I. L. R. 22 All 93*, referred to. JAGAN NATH *v.* AJUDHIA SINGH (1912). **I. L. R. 35 All. 14**

——— s. 199—*Civil and Revenue Courts—Jurisdiction—Appeal—Question of proprietary right* The plaintiff sued in the Revenue Court to eject the defendant alleging that the land in suit was his occupancy holding and that the defendant was his sub-tenant. The defendant pleaded that he was a co-sharer in the village and that the land in suit was his *khud-kasht*. *Held*, that no question of proprietary title was raised by the pleadings, and that no appeal, therefore, lay to the District Judge from the order of the Assistant Collector who had decided the case in the first instance *Dal Chand* v. *Shamla, 2 All. L. J. 176*, dissented from. UDIT TIWARI *v.* BIHARI PANDE (1913) . . . **I. L. R. 35 All. 521**

**AGREEMENT.**

——— construction of—

*See* MAHA-BRAHMAN.
**I. L. R. 35 All. 412**

**AGREEMENT AGAINST PUBLIC POLICY.**

*See* LAND-LORD AND TENANT
**I. L. R. 35 All. 19**

——— *Contract Act (IX of 1872), s. 23—Compromise forbidden by law—An agreement to compound a non-compoundable offence, void—Criminal breach of trust—Mortgage—Illegal consideration.* It is contrary to public

**AGREEMENT AGAINST PUBLIC POLICY—*concld.***

policy to compound a non-compoundable criminal case, and any agreement to that end is wholly void in law: *Held*, therefore, that a mortgage bond executed by a *gomastha* in favour of his master for withdrawal of a prosecution for criminal breach of trust, which is not compoundable under the Criminal Procedure Code, is void (though a settlement out of Court had been suggested by the Magistrate), and a suit by the master to enforce such a bond is not maintainable *Nubbee Buksh* v *Hingon, 8 W. R 412*, commented on. MAJIBAR RAHMAN *v.* MUKTASHED HOSSEIN (1912).
I. L. R. 40 Calc. 113

**AGREEMENT OF SALE.**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), s. 54 . I. L. R. 37 Bom. 53

**AGREEMENT TO COMPOUND NON-COMPOUNDABLE OFFENCE.**

*See* AGREEMENT AGAINST PUBLIC POLICY.
I. L. R. 40 Calc. 113

**AGREEMENT TO SEPARATE.**

*See* CONTRACT ACT (IX OF 1872), S. 25. . . I. L. R 37 Bom. 280

**AGRICULTURIST.**

*See* AGRICULTURISTS IN THE PUNJAB.

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 . I. L. R. 37 Bom. 415

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 2
I. L. R. 37 Bom. 97, 398

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 20
I. L R. 37 Bom. 486

**AGRICULTURISTS IN THE PUNJAB.**

——— custom of—

*See* HINDU LAW—ALIENATION.
I. L. R 40 Calc. 288

**AHIRS.**

*See* HINDU LAW—ADOPTION.
I. L. R. 35 All. 263

**ALIENATION.**

*See* HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 721

*See* HINDU WIDOW.
I. L. R. 40 Calc. 555

*See* IMPARTIBLE ZAMINDARI.
I L. R. 36 Mad. 325

*See* LIMITATION . I. L. R. 37 Bom. 231

*See* MORTGAGE . I. L. R. 40. Calc. 342

——— by father—

*See* HINDU LAW—ALIENATION.
I L R. 40 Calc. 966

**ALIENATION—*concld.***

——— by tenure holder—

*See* MALABAR LAW
I. L R. 36 Mad. 380

——— by widow—

*See* LIMITATION ACT (IX OF 1908), SS. 6 AND 125 . I. L. R. 36 Mad. 570

——— during execution—

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S 52 I. L. R 37 Bom. 621

——— power of—

*See* SHEBAIT . I. L. R. 40 Calc. 895

**ALIYASANTANA LAW.**

——— *Separate maintenance' grounds for—What are proper grounds* A member of the Aliyasantana or Marumakkathayam tarwad will be entitled to separate maintenance from the tarwad if there are good grounds for such allotment. What are proper grounds will depend upon the circumstances of each case. The cases show that where there is substantial inconvenience in living in the family house either on account of want of room there or because there are quarrels which make it uncomfortable to a member to live there and where there are several houses belonging to the tarwad and a member lives in one of them and where the karnavan's conduct has afforded a valid excuse for a member living away from the tarwad house separate maintenance may be awarded. There may be other grounds which on social or economical reasons may be considered proper. Though a member of an Aliyasantana or Marumakkathayam tarwad may not be entitled to a partition or a specific portion of the income which may be an indirect method of enforcing a partition, he is still a co-owner with the karnavan of the tarwad property, and he may in a proper case be entitled to separate maintenance. Waiver (arising from conduct, etc ) is a good plea to a claim for past maintenance. *Raja Yerlagadda Mallikarjuna Prasada Nayudu* v. *Raja Yerlagadda Durga Prasada Nayudu, I L. R 24 Mad. 147*, followed. Considering the special and common expenses which a yejman or karnavan has to incur out of the income of the family it is wrong to award a numerically proportionate share of the income to any particular member. The law as to the respective rights of a yejman or karnavan and the junior member of the tarwad, discussed with reference to decided cases. MARADEVI *v.* PAMMAKKA (1913) . . I. L. R. 36 Mad. 203

**ANCESTRAL LAND.**

*See* HINDU LAW—ALIENATION.
I. L. R. 40 Calc. 288

**APPEAL.**

*See* AGRA TENANCY ACT (II OF 1901), SS. 58, 200 . I. L. R. 35 All. 157

**APPEAL**—*contd.*

*See* AGRA TENANCY ACT (II OF 1901), S. 199 . . **I. L. R. 35 All. 521**

*See* CIVIL PROCEDURE CODE, 1908, SS. 2, 104, 148 . **I. L. R. 35 All 582**

*See* CIVIL PROCEDURE CODE, 1908, S. 97 . . **I. L. R. 37 Bom. 480**

*See* CIVIL PROCEDURE CODE, 1908, O. XX, R. 18. **I. L. R. 35 All. 159**

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1; O. XLIII, R. 1 **I. L. R. 35 All 425**

*See* CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23; O. XLIII, R. 1 (*u*). **I. L. R. 35 All. 427**

*See* COURT-FEES ACT (VII OF 1870), S 7, CL. IX . **I. L. R. 35 All. 92, 94**

*See* CRIMINAL PROCEDURE CODE, SS 35 AND 408 . . **I. L R. 35 All. 154**

*See* CRIMINAL PROCEDURE CODE, S. 125 **I. L. R. 35 All. 103**

*See* CRIMINAL PROCEDURE CODE, S. 195 **I. L. R 35 All. 90**

*See* CRIMINAL PROCEDURE CODE, SS. 517, 520 . . **I. L R. 35 All. 374**

*See* MAMLATDAR'S COURTS ACT (BOM ACT II OF 1906), S. 23. **I L. R. 37 Bom. 595**

*See* SANCTION FOR PROSECUTION. **I L R. 40 Calc. 37**

*See* SUCCESSION CERTIFICATE ACT (X OF 1865), S. 244. **I. L. R. 35 All. 448**

*See* TRANSFER . **I. L. R. 40 Calc. 259**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 169. **I. L R. 35 All. 177**

*See* UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900), S. 187. **I. L. R. 35 All. 450**

*See* UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900), S. 187. **I. L. R 35 All. 578**

——— **dismissal of, for default—**

*See* CIVIL PROCEDURE CODE, 1908, O. IX, R. 8 . . . **I. L. R. 35 All. 105**

——— **in criminal case—**

*See* PRIVY COUNCIL. **I. L. R. 36 Mad. 501**

——— **over-valuation of—**

*See* REFUND OF COURT-FEE. **I. L. R. 40 Calc. 365**

**APPEAL**—*concld.*

——— **right of—**

*See* SANCTION FOR PROSECUTION. **I. L. R. 40 Calc. 239**

——— **summary dismissal of—**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 11. **I. L. R. 37 Bom. 610**

**1.** ——— *Small cause case tried as an ordinary suit—Jurisdiction.* Where a Judicial officer invested with Small Cause Court jurisdiction tries a suit, which he might have tried under the summary procedure, in the ordinary manner, the character of the suit is not thereby altered, and his decree is not appealable *Shankarbhai* v *Somabhai, I. L R 25 Bom 417*, followed. INDRA CHANDRA MUKHERJEE *v.* SRISH CHANDRA BANERJEE (1913) . . **I. L R. 40 Calc. 537**

**2.** ——— *Concurrent sentences of imprisonment not individually appealable—Aggregate of sentences—Right of appeal—Criminal Procedure Code (Act V of 1898), ss. 35 (3) and 413.* An accused sentenced to concurrent terms of imprisonment, not one of which is individually appealable, has no right of appeal. Concurrent sentences cannot, for the purposes of appeal, be taken collectively. *Suknandan Singh* v. *King-Emperor, 17 C. L. J. 392*, approved. *Abdul Khalek* v. *King-Emperor, 17 C. W. N. 72*, not followed. The mere admission of an appeal does not preclude the Court from subsequently determining the question whether or not an appeal lies in the case. AZIZ SHEIKH *v.* EMPEROR (1913). **I L. R. 40 Calc. 631**

## APPEAL TO PRIVY COUNCIL.

*See* CIVIL PROCEDURE CODE, 1908, S. 110 . . **I. L. R. 35 All. 445**

*See* LAND ACQUISITION ACT (I OF 1894) S. 54 . . **I. L. R. 37 Bom. 506**

**1.** ——— *Right of appeal—Proceedings on award by Collector under Land Acquisition Act (I of 1894)—Decision of Court of Lower Burma on reference by Collector of Rangoon—Question as to value of land a matter for local judicial tribunals.* No appeal lies to His Majesty in Council from a decision of the Chief Court of Lower Burma, on a reference to that Court by the Collector of Rangoon, in proceedings under the Land Acquisition Act (I of 1894), on an award made by him as to the value of land acquired. A right of appeal must be given by express enactment, and cannot be implied *Sandback Charity Trustees* v. *North Staffordshire Railway Co., L. R. 3 Q. B. D. 1, per* LORD BRAMWELL, followed. The question in this case, moreover, being only a question of fact as to the value of land acquired under the Act, was in the opinion of their Lordships, one for decision by local arbitrators or Courts, and not a matter for determination by a judicial tribunal in England. RANGOON BOTATOUNGM COMPANY, LTD., *v* THE COLLECTOR, RANGOON (1912) . . . . **I. L. R. 40 Calc. 21**

APPEAL TO PRIVY COUNCIL—*contd.*

2. ——————— *Orders under ss. 311, 312 of the Civil Procedure Code, 1882, confirming or setting aside sales—Civil Procedure Code, 1882, ss. 588 (16), 594, 595, 596—Orders declared final by s. 588—Setting aside sale in execution of decree—Non-representation of minor—Irregularities in proclamation of sale—Civil Procedure Code, 1882, s. 287—Under-estimation of value of property—Rights of mother of minor as his natural guardian.* An appeal lies to His Majesty in Council from an order under ss. 311 and 312 setting aside of confirming a sale, notwithstanding the provisions as to such orders being final contained in s. 588 (*16*) of the Code. The definition or "decree" in s. 2 of the Code is not applicable to Chapter XLV (relating to appeals to His Majesty in Council) For the purposes of that Chapter a definition of "decree" has been therein adopted, which is special, and differs from the meaning it bears elsewhere in the Code. The word decree in that Chapter must be read as being equivalent to "decree, judgment or order.' So read final orders may be appealed against to His Majesty in Council under s. 595, and that provision cannot be restricted by the provisions of s. 588 (*16*) that such orders passed in appeal "shall be final." In this case, which was an appeal from an order of the High Court confirming a sale in execution of decree, and reversing an order of a Deputy Commissioner which set the sale aside, it appeared that the judgment-debtor had died pending the proceedings for attachment and sale, leaving a widow and a minor son, and that the whole of the proceedings subsequent to his death were without notice to any one representing the minor; that the sale proclamation had not been properly made, and did not contain the particulars required by s. 287 of the Code of Civil Procedure, 1882, especially those as to the value of the property, which was grossly under-estimated; that the property was sold for a very inadequate price; and that there was abundant evidence that the appellant had suffered substantial injury therefrom. *Held* (reversing the decision of the High Court), that there had been no proper representation of the minor, and that the above matters constituted material irregularities in publishing and conducting the sale within the meaning of s. 311 of the Code, which justified the setting aside of the sale. There were concurrent decisions of the Courts in India that the Court of Wards never took charge of the property of the minor, and their Lordships came to the same conclusion *Held*, that, inasmuch as the interests of the minor with regard to the property were not in fact represented by the Court of Wards, it was open to his mother as his natural guardian to appear (as she had done) and represent him in the proceedings, and his appeal was not rendered incompetent thereby. KRISHNA PERSAD SINGH *v.* MOTI CHAND (1913) . **I. L. R. 40 Calc. 635**

3. ——————— *Application for leave to appeal—Whether appeal to Privy Council lies in cases under the Provincial Insolvency Act—Right of appeal to Privy Council, on what it rests—Letters Patent of 1865, cl. 39—Civil Procedure Code (Act V of 1908), ss. 109, 110, and O. XLV, r. 3—Provincial Insolvency Act (III of 1907), ss. 46, 47.* The right of appeal from the High Court to the Privy Council rests on cl. 39 of the Letters Patent of 1865 read with ss. 109 and 110 and O. XLV, r. 3 of the Civil Procedure Code. The Provincial Insolvency Act does not interfere with any right of appeal to the Privy Council that may otherwise exist. *Bombay Burmah Trading Corporation, Ltd.* v *Dorabji Cursetji Shroff, I. L. R. 27 Bom. 415*, referred to. Where an application for insolvency was dismissed under s. 15 of the Provincial Insolvency Act and an appeal was also dismissed in the High Court under O XLI, r. 11. *Held*, that an appeal to the Privy Council was competent if the matter was appealable in other ways. CHATRAPAT SINGH DUGAR *v.* KHARAG SINGH LACHMIRAM (1913). **I. L. R. 40 Calc. 685**

4. ——————— *Indian Penal Code (Act XLV of 1860), ss. 302, 109—Conviction when to be set aside on appeal—Violation of principles of natural justice or grave injustice done or disregard of legal process—Suspicion of guilt—Inadmissible and hearsay evidence admitted and used to grave prejudice of accused—Absence of reliable evidence.* When their Lordships are of opinion that by some disregard of the form of legal process, or by some violation of the principles of natural justice or otherwise some substantial and grave injustice has been done, then whatever doubts they may have of the appellant's innocence, or whatever suspicion they may entertain of his guilt or however great may be their reluctance to interfere with, or overrule the decisions of the Indian Courts in criminal matters, their Lordships think they are bound to advise His Majesty that the conviction should not be allowed to stand. *In re Dillet, 12 A. C. 459*, referred to and followed. Their Lordships have come to the conclusion that injustice of the kind mentioned above has been done in this case by the admission of a vast body of wholly inadmissible, hearsay and other evidence and the evidence so admitted has been used to the grave prejudice of the accused, and that at the end of the hearing before the Sessions Judge there did not exist any reliable evidence upon which a capital conviction could be safely or justly based. VAITHI NATHA PILLAI *v.* THE KING-EMPEROR (1913) . . **17 C. W. N. 1110**
**I. L. R. 36 Mad. 501**

APPELLATE COURT.

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), S. 568.
**I. L. R. 36 Mad. 477**

——————— duty of—

*See* PRACTICE . **I. L. R. 40 Calc. 376**

APPLICATION.

*See* SUIT . . **I. L. R. 40 Calc. 428**

**APPORTIONMENT.**

*See* LAND ACQUISITION—COMPENSATION.
**I. L. R. 40 Calc. 64**

**APPORTIONMENT OF COMPENSATION.**

*See* LAND ACQUISITION ACT (I OF 1894), SS. 3 (*b*), 11, AND 31 (*1*), (*2*)
**I. L. R. 37 Bom. 76**

——— between zamindar and occupancy ryot—

*See* LAND ACQUISITION ACT.
**I. L. R. 36. Mad. 395**

**APPORTIONMENT OF COSTS.**

*See* PUNITIVE POLICE.
**I. L. R. 40 Calc. 452**

**APPROVER.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 337, CL (*3*).
**I. L. R. 37 Bom. 146**

**ARBITRATION**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), s. 9, SCH II.
**I. L. R. 37 Bom. 20, 442**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SCH II, PARA. 17.
**I. L. R. 36 Mad. 353**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXIII, R. 3, SEC 89.
**I. L. R. 37 Bom. 639**

1. ——— *Bengal Chamber of Commerce, arbitration by—Award, filing of—Arbitration Act (IX of 1899), ss 11, 13, 14 and 15—Rules under the Indian Arbitration Act, 1899—Submission—Bought and sold notes—Stamp duty—Form of order—Costs.* Where bought and sold notes relating to a contract for the sale of goods, contained an arbitration clause, and were stamped with one anna stamp: *Held*, that, on the materials before the Court, the practice of stamping such documents with one anna stamp was not invalid, and the proceedings in arbitration were effectual. Under the provisions of the Indian Arbitration Act, an award is to be filed not on the application of the parties, but at the instance of the arbitrator; and when the award has been filed, the result is not that there is a suit in which a decree has been passed, but that there is an award which is enforceable as a decree. *Tribhuvandas Kalliandas Gajjar* v. *Jivanchand, I. L. R. 35 Bom. 196*, and *In re Bankruptcy Notice* [1907], *1 K. B 478*, referred to. Such of the rules of Court framed under the Indian Arbitration Act as are not in accordance with the Act are inoperative, and no effect can be given to them. BAIJNATH *v.* AHMED MUSAJI SALEJI (1912) . . **I. L. R. 40 Calc. 219**

2 ——— *Award—Party to the suit not made party to the submission to arbitration—Party so omitted not a necessary party to the suit. Held*, that an arbitration and an award made in the course of a suit would not be rendered invalid by the mere fact that a party whose name was in the record, but who was not a necessary party to the suit, was not made a party to the arbitration proceedings. SABTA PRASAD *v.* DHARAM KIRTI SARAN (1912) . . **I. L. R 35 All. 107**

**ARBITRATION—*concld.***

**ARBITRATION ACT (IX OF 1899).**

——— s. 10.

*See* INSURANCE **I. L. R. 37 Bom 183**

——— ss. 11, 13 to 15.

*See* ARBITRATION **I. L. R. 40 Calc. 219**

**ARMS ACT (XI OF 1878).**

——— ss. 13, 19 (*e*)—*Arms—Gun—License—Going armed without license—Servant fetching gun for his master—Liability of servant* The accused was sent to an adjacent village by his master, who was licensed to bear arms, to fetch a gun which he (the master) had left there. While so returning with the gun, the accused was arrested for going armed in contravention of the provisions of s. 13 of the Indian Arms Act (XI of 1878). He was convicted and sentenced under s. 19 (*e*) of the Act *Held*, acquitting the accused, that the mere temporary possession, without a license, of arms for purposes other than their use was not an offence within the meaning of s 19 of the Indian Arms Act (XI of 1878). *Emperor* v. *Harpal Rai, 24 All. 454*, followed. EMPEROR *v.* KOYA HANSJI (1912).
**I. L. R. 37 Bom. 181**

——— s. 19 (*c*)—*Servant, temporary possession of gun by, on behalf of master* The petitioner was carrying a gun on behalf of his master with the license to the Magistrate for the purpose of a renewal of the license. It was admitted that the object of the petitioner was merely to carry the gun to the Magistrate. The petitioner was convicted under s 19 (*6*) of the Act for possessing a gun in contravention of the provisions of the Act. *Held*, that the conviction of the Petitioner cannot be upheld *Queen-Empress* v. *Tota Ram, I. L R 16 All 276*, *Probhat Chandra* v. *Emperor, I. L. R 35 Calc 219*; *12 C. W. N. 272*, followed. CHARU CHANDRA GHOSH *v.* THE KING-EMPEROR (1913) . **17 C W N. 979**

**ARMY ACT, 1865 (44 & 45 VICT., c. 58).**

——— s. 136.

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S 60, CL (*2*) (*b*)
**I. L. R. 37 Bom 26**

**ARREARS OF REVENUE.**

*See* COMMISSIONER, POWER OF
**I. L. R. 40 Calc. 552**

**ARREST.**

*See* CRIMINAL PROCEDURE CODE, SS 55, 56 AND 110 . **I. L. R. 35 All. 407**

ARREST AND SEARCH.

*See* CONSPIRACY I. L. R. 40 Calc. 898

ASCETICS.

*See* HINDU LAW—INHERITANCE
I. L. R. 40 Calc. 545

ASSESSMENT.

——— failure to pay—

*See* LAND REVENUE CODE (BOM ACT V OF 1879, AS AMENDED BY BOM ACT VI OF 1901), S 56.
I. L. R. 37 Bom. 692

——— method of—

*See* LAND ACQUISITION—COMPENSATION.
I. L. R. 40 Calc. 64

ASSESSORS.

*See* CRIMINAL PROCEDURE CODE, S 284 . . I. L. R. 35 All 570

——— *Examination of Assessors—Re-trial—Criminal Procedure Code (Act V of 1898), ss. 309, 403, 423, 439—Assessors not to be questioned until their opinions delivered and recorded—Rioting—Right of private defence—Practice.* S. 309 of the Code of Criminal Procedure gives the Judge a discretion to sum up the evidence for the benefit of the assessors if he thinks necessary, but it gives him no power to question them until they have delivered their opinions orally and he has recorded such opinions. When a conviction is set aside and a re-trial ordered, the whole case is re-opened and the accused must be tried again on all the charges originally framed, and having regard to the provisions of s. 423 of the Code of Criminal Procedure, the provisions of s. 403 in that respect cannot apply. *Krishna Dhan Mandal* v. *Queen-Empress, I. L. R. 22 Calc. 377*, and *Queen-Empress* v. *Jabanulla, I. L R 23 Calc 975*, referred to NAZIMUDDIN *v* EMPEROR (1912)
I. L. R. 40 Calc. 163

ASSETS.

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS 276 AND 295
I. L. R 37 Bom. 138

ASSIGNMENT.

*See* TRADE MARK.
I. L. R. 40 Calc. 814

ASSIGNMENT OF DECREE.

*See* REGISTRATION ACT (XVI OF 1908). SS. 17 (*b*), 49 . I. L. R. 36 All. 524

ASURA FORM OF MARRIAGE.

*See* HINDU LAW—MARRIAGE.
I. L R. 37 Bom. 295

ATTACHED PROPERTY.

——— claims to—

*See* VOLUNTARY PAYMENT.
I. L. R. 40 Calc. 598

ATTACHMENT.

*See* CIVIL PROCEDURE CODE (ACT V OF 1908) S. 60, CL (*2*) (*b*).
I. L R. 37 Bom. 26
I. L. R. 37 Bom. 415, 471
I. L. R. 35 All. 307

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 276, 295.
I. L. R. 37 Bom. 138

*See* INSOLVENCY . I. L. R. 40 Calc. 78

*See* LIMITATION ACT (XV OF 1877), SCH. II, ART. 120.
I. L. R. 36 Mad. 383

*See* REVENUE JURISDICTION ACT, BOMBAY (X OF 1876), SS 4 (*c*), 5, 6.
I. L. R. 37 Bom 542

——— of salary of officer in British army—

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S 60, CL (*2*) (*b*)
I. L. R. 37 Bom. 26

1. ——— *Criminal Procedure Code (Act V of 1898), ss. 146 and 148—Refusal to grant time—Duties of the Magistrate—Practice.* It is only when the Magistrate decides that none of the parties was in possession or is unable to satisfy himself as to which of them is in possession, that he can attach property under s. 146 of the Criminal Procedure Code He cannot say that he is unable to satisfy himself if he has never made the slightest effort to do so. *Mansar Ali* v. *Matiullah, 12 C. W. N. 896*, followed. *Bejoy Madhab Chowdhury* v. *Chandra Nath Chuckerbutty, 14 C. W. N. 80*, distinguished. SHEOBALAK RAI *v.* BHAGWAT PANDEY (1912).
I. L. R. 40 Calc. 105

2. ——— *Warrant—Penal Code (Act XLV of 1860) s. 147—Nazir's power of delegation—"Bailiff"—Civil Procedure Code (Act V of 1908), O. XXI, r. 25.* Where a nazir directed a peon to attach property and fixed a time within which the attachment was to take place and the peon executed the warrant of attachment after the expiration of the time so fixed: *Held*, that the peon, deriving his authority from the Court to make the seizure, could lawfully make the seizure even after the time fixed by the nazir for the execution had expired. The nazir and bailiff are not the same person. The officer to whom O. XXI, r. 25 of the Civil Procedure Code refers is not the nazir, but the peon *Dharam Chand Lall* v. *Queen-Empress, I. L. R. 22 Calc. 996*, distinguished. SUBED ALI *v.* EMPEROR (1913).
I. L. R. 40 Calc. 849

ATTEMPT.

*See* PENAL CODE (ACT XLV OF 1860), SS. 457, 511 . I. L. R. 37 Bom 553

ATTESTATION.

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 59, 100.
I. L. R 35 All. 164

**ATTESTING WITNESS.**

*See* EVIDENCE ACT (I OF 1872), S 68.
I L. R. 35 All. 254

**ATTORNEY AND CLIENT.**

*See* ATTORNEYS.

——— *Practice—Refusal of attorney to proceed until payment of costs already incurred—Discharge by Attorney—Acceptance of discharge by client—Order for change of attorney—Payment of costs.* A firm of attorneys refused to proceed further in the conduct of a suit, unless their clients paid them as promised a certain sum on account of costs incurred: *Held*, that by so doing the attorneys discharged themselves, and the clients were entitled to an order for change of attorney without first paying the costs already incurred to the attorneys on the record. *Held*, further, that the mere fact that after the attorneys' refusal the clients instructed them to brief counsel to apply for an adjournment of the suit, which instruction the attorneys declined to accept, did not amount to a refusal on the client's part to recognize the discharge of the attorneys *Basanta Kumar Mitter* v. *Kusum Kumar Mitter*, *4 C. W. N. 767*, and *Atul Chandra Mukerjee* v. *Shosee Bhusan Mukerjee*, *6 C W. N. 215*, followed. MAHESHPUR COAL COMPANY, LTD. *v* JATINDRA NATH GUPTA (1912).
I. L. R. 40 Calc. 386

**ATTORNEYS.**

——— right of audience—

*See* PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 6, 27, 36 AND 121 . . I. L. R. 37 Bom. 464

**AUCTION-PURCHASER.**

——— suit by, to recover purchase-money—

*See* LIMITATION . I. L. R. 40 Calc. 187

——— title of—

*See* ADVERSE POSSESSION
I. L. R. 40 Calc. 173

**AUCTION-SALE.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S 68, O. XXI, R 100.
I. L. R. 37 Bom. 488

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89
I. L. R 37 Bom. 387

**AUTREFOIS ACQUIT.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 107.
I. L. R. 36 Mad 315

*See* CRIMINAL PROCEDURE CODE, S 403 (*1*).
I. L. R. 36 Mad 308

**AWARD.**

*See* ARBITRATION . I. L. R. 35 All. 107

**AWARD**—*concld.*

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 9, SCH. II, S. 20.
I. L. R. 37 Bom. 442

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 89. O. XXIII, R. 3.
I. L. R. 37 Bom. 639

——— filing of—

*See* ARBITRATION I. L. R. 40 Calc. 219

## B

**BAIL.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S 107, CL (*4*).
I. L. R. 36 Mad. 474

**BAILIFF.**

*See* ATTACHMENT I. L. R 40 Calc. 849

**BAILMENT.**

——— *Pledge of cotton by warehouseman to whom it had been entrusted—Pledge to Bank and return of cotton to person who pledged it—No notice by Bank of any other claim—Conversion, action for—Contract Act (IX of 1872), s. 178—Admissibility of evidence raising defence not pleaded.* The respondent (plaintiff) purchased certain bales of cotton, and entrusted them to the second defendant as a muccadam (or warehouseman) who pledged them to the appellant Bank (first defendant) in whose godowns they remained until they were sold by the second defendant in the course of his business with the Bank, withdrawn from the godowns, and passed out to the second defendant or to his order. In a suit for the cotton, the plaintiff claimed delivery of the bales or their value, charged the Bank with conversion of the goods, and in the alternative, if it was held that he was not entitled to such relief, he claimed to stand in the shoes of the second defendant, and asked that his rights should be ascertained and declared, and that the securities deposited by the second defendant with the Bank should be marshalled in his favour. *Held* (reversing the decision of the High Court, and restoring the order of the Trial Judge of the same Court), that the fact that the Bank parted with the cotton deposited with them to, or to the order of, the person by whom it was deposited without notice of any claim by any other person afforded a complete defence to the action. In this view their Lordships deemed it unnecessary to express any opinion on the construction of section 178 of the Contract Act (IX of 1872), on which the Courts below had differed, the first Court holding that it protected the Bank and that the pledge of the cotton was valid, and the Appellate Court holding to the contrary effect. The defence that the bales had been returned had not been pleaded by the Bank in their written statement, but the fact was established during the cross-examination of the second defendant as a witness for the plaintiff,

**BAILMENT**—*concld*

and proved by the inspection of his books. Objection was taken to the Banks raising the defence, and an application to amend the written statement was refused by the first Court. But later on the case evidence of the return of the cotton was held to be admissible in regard to the alternative claim of the plaintiff *Held*, that the evidence was rightly admitted having regard to the claim of the plaintiff to marshall securities, and that if properly admitted it was admissible for all purposes BANK OF BOMBAY *v.* NANDLAL THAKERSEY DAS (1912) **I. L. R. 37 Bom. 122**

**BALLAVACHARYA GOSSAINS.**

*See* HINDU LAW—ENDOWMENT
**I. L. R. 35 All. 283**

**BANKER AND CUSTOMER.**

——————— *Payment to Bank with instructions as to disposal, effect of—"In suspense account," meaning of.* When *A* paid money into a bank with instructions to pay over the same to *B* who had no account with the bank, and the bank wrote to *B* stating that they had received the money and held the same in suspense account pending instructions from *B*. *Held*, on appeal from *The Official Assignee of Madras* v *Rajam Ayyar, I. L. R 33 Mad 299*, by MILLER and MUNRO, *JJ*, that the bank held the amount as agents of *A* for remittance to *B*, and not as bankers either of *A* or *B*. The *Official Assignee of Madras* v *Smith, I. L R 32 Mad. 68*, distinguished. *Per* ABDUR RAHIM, *J*. That the relationship between the bank and *B* was not that of debtor and creditor and that the bank held the money in a fiduciary capacity as bailee or agent. A banker holding money of a person "in suspense" does not treat it like an ordinary customer's money. *The Official Assignee of Madras* v. *Smith, I. L. R. 32 Mad. 68, 69*, dissented from. OFFICIAL ASSIGNEE OF MADRAS *v.* RAJAM AYYAR (1913).
**I. L. R. 36 Mad. 499**

**BAR-COUNCIL, RESOLUTIONS OF.**

——————— *Etiquette affecting Counsel—Counsel as witness—Retainer, acceptance of—Professional ethics* The following resolutions of the Bar-Council approved:—"(*a*) If counsel knows or has reason to believe that he will be an important witness in a case, he ought not to accept a retainer therein. (*b*) If he accepts a retainer not knowing or having reason to believe that he will be such a witness, but at the opening or at any subsequent stage before evidence is concluded it becomes apparent that he is a witness on a material question of fact, he ought not to continue to appear in the case unless he cannot retire without jeopardising the interests of his client. (*c*) If counsel knows or has reason to believe that his own professional conduct on matters out of which the action arises is likely to be impugned in the case, he ought not to accept a retainer. (*d*) If he accepts a retainer not knowing or having reason to believe that his own

**BAR-COUNCIL, RESOLUTIONS OF**—*contd.*

professional conduct in such matters is likely to be impugned, but finds in the course of the case that it is so impugned, he ought to adopt the same course of conduct as is mentioned in clause (*b*) *ante*. (*e*) In either of the cases mentioned in clauses (*b*) and (*d*) there is no rule of professional ethics which debars counsel, if he continues to act as counsel in the case, from going into the witness-box and being cross-examined."

Although the resolutions of the Bar-Council are not binding on the Courts, the Bar-Council is the recognised authority on matters of professional conduct and etiquette affecting counsel, and its opinion is of the greatest weight and value. There is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such. *Sethna* v *Muza Mahomed Shirazi, 9 Bom L. R. 1044, Cobbett* v *Hudson, 1 E. & B. 11, Stones* v *Byron, 4 Dowl & L 393, Deane* v. *Packwood, 4 Dowl & L. 395n, Corea* v. *Peiris, [1909] A. C. 549, 14 C W N. 86, Nundo Lal Bose* v. *Nistarini Dassi, I. L. R. 27 Calc. 428*, referred to. *Curry* v *Walter, 1 Esp. 456*, distinguished. As a general practice, however, it is undesirable when the matter to which counsel depose is other than formal, that they should testify either for or against the party whose case they are conducting. Under s. 118 of the Evidence Act, counsel, although they may be engaged in the case, are competent to testify whether the facts in respect of which they give their evidence occur before or after their retainer. *Cobbett* v *Hudson, 1 E & B 11*, referred to WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912).
**I. L. R. 40 Calc. 898**

**BARRISTERS.**

——————— *English barristers practising both as barrister and solicitor at Shanghai — Partnership between them, if contrary to etiquette and law—Sale by partner of share of business to co-partner—Covenant not to practice for a reasonable time—Suits by the other partner for injunction—Agreement by solicitor to pay a share of proceeds of business to clerk, if unprofessional.* There is no reason why a person who carries on both the barrister and the solicitor's branches of the profession (as at Shanghai) should not enter into an agreement not to practise for a reasonable time. Where one of two persons who carried on at Shanghai in partnership the business of both solicitor and barrister, sold his interest in it to his partner covenanting at the same time not to practise law for a term of five years: *Held*, that the latter was entitled to an injunction restraining the former from practising before the expiry of the period. HOME *v.* EDWARD DOUGLAS (1912).
**17 C. W. N. 215**

**BENAMIDAR.**

*See* LIMITATION ACT (IX OF 1908) SCH. I, ARTS. 91 AND 120.
**I. L. R. 35 All. 149**

**BENAMI PURCHASE.**

*See* CIVIL PROCEDURE CODE, 1908, s. 66 . . I L. R. 35 All. 138

**BENEFITS OF DECREE.**

——— suit for—

*See* PRINCIPAL AND AGENT.
I L. R. 40 Calc. 335

**BENGAL ACTS.**

——— 1859—X.

*See* BENGAL RENT ACT.

——— 1865—VIII.

*See* RENT RECOVERY ACT.

——— 1866—II.

*See* CALCUTTA SUBURBAN POLICE ACT.

——— 1866—IV.

*See* CALCUTTA POLICE ACT.

——— 1868—VII.

*See* BENGAL LAND REVENUE SALES ACT.

——— 1876—VI

*See* CHOTA NAGPUR ENCUMBERED ESTATES ACT.

——— 1879—I

*See* CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT.

——— 1880—VI.

*See* BENGAL DRAINAGE ACT.

——— 1884—III.

*See* BENGAL MUNICIPAL ACT.

——— 1899—I.

*See* GENERAL CLAUSES ACT.

——— 1899—III

*See* CALCUTTA MUNICIPAL ACT.

——— 1908—VI.

*See* CHOTA NAGPUR TENANCY ACT

——— 1910—I.

*See* EXCISE ACT (E. B. AND ASSAM).

**BENGAL CHAMBER OF COMMERCE.**

——— arbitration by—

*See* ARBITRATION I. L. R. 40 Calc. 219

**BENGAL DRAINAGE ACT (BENG. VI OF 1880).**

——— ss 32, 35, 42(*b*), 44, sub-ss. (*1*) and (2)—*Drainage charges, suit by landholder to recover, from tenant—Plaintiff, if must prove land to have been benefited—Commissioners' report apportioning liability, if admissible to prove benefit—Tenants' liability, if must be determined by Collector—Notice on tenant, if necessary—Jurisdiction of Civil Court—Second Appeal—Civil Procedure Code (Act XIV of 1882), s. 586.* A sum payable by a tenant to a landholder under cl. (*b*) of s. 42 of the Bengal Drainage Act (Beng. VI of 1880) being recoverable (under the provisions of sub-s. (*1*) of s. 44 of that Act as if the same were an arrear of rent, a suit to recover the same comes under cl. (*8*) of Sch. II of the Small Cause Courts Act and is not a suit of a Small Cause Court nature within the meaning of s 586 of the Civil Procedure Code of 1882. The mere fact of a sum of money having been declared under the Act to be payable by a landholder in respect of any land is not sufficient to make a tenant of the land liable to contribute towards it. Cl (*b*) of s. 42 of the Act requires that the landholder should show in the first instance that the land of any particular tenant, against whom a claim has been made, has been benefited by any scheme or works. The Commissioners' report under s. 32 of the Act cannot be treated as *primâ facie* evidence in favour of the landlord in a suit to recover drainage charges against tenants. *Quære:* Whether the power of determining any question as to the amount which any tenant is to pay in respect of drainage charges is not intended to be exclusively vested in the Collector, and whether a notice under sub-s. (*2*) of s. 44 would not therefore be a necessary preliminary to the maintainability of a suit to recover such charges from a tenant BASANTA KUMAR RAI *v.* RAM CHANDRA ROY CHAUDHRY (1903).
17 C. W. N. 499

**BENGAL MUNICIPAL ACT (III OF 1884).**

——— ss. 6 (*3*), 85, 101, 103—"*Holding,*" *meaning of—How to be delimited—Assessment—Owner's liability, when there are intermediate interests—Occupier.* The term "holding" as used in s. 85 of the Bengal Municipal Act means land held by an occupier under one title or agreement and surrounded by one set of boundaries The rates assessed upon holdings according to s. 10 are payable by the owner, that is to say, the person above the occupier, if the occupier himself is not the owner, under s. 103 Where there is an intermediate interest between the owner and the occupier, such intermediate holder, and not the ultimate owner, is the person liable to pay rates. HAMID HOSSAIN *v.* PATNA MUNICIPALITY (1911)
17 C. W. N. 812

——— ss. 85, 116—*Assessment of tax on "circumstances and property"—"Circumstances," meaning of—Valuation of "circumstances and property" by Municipality, if may be reviewed by Civil Court—Court if may question assessment when "circumstances and property" outside Municipality are considered—Onus on Municipality to disclose basis of assessment—Non-disclosure, presumption from.* The "circumstances and property within the Municipality," "according to" which a tax upon persons occupying holdings within the



——— s. 32—*concld.*

**BENGAL MUNICIPAL ACT (III OF 1884)—*contd.***

**——— s. 85—*concld.***

Municipality is authorised to be imposed by s. 85 of the Bengal Municipal Act, signify the "means and property" of the person in question within the Municipality. *Chairman of Giridi Municipality v. Suresh Chunder Mazumdar, I. L. R. 35 Calc. 859; 12 C. W. N. 709,* followed. It is not open to the Courts to assess the value of the "circumstances and property" for the purposes of s 85. Where in a suit brought to question the legality of a tax imposed upon the plaintiff under s. 85, the defendant Municipality averred that the tax had been imposed upon "the circumstances and property" of the plaintiff within the Municipality but in the evidence did not disclose the facts showing that this was done, and the lower Appellate Court found facts inconsistent with the case that only the "circumstances and property" within the Municipality were considered. *Held,* that the presumption in s. 106 of the Evidence Act applied, and the plaintiff must be taken to have made out his case that the assessment was not according to the plaintiff's "circumstances and property" within the Municipality. DEBNARAIN DUTT *v.* CHAIRMAN OF THE BARUIPUR MUNICIPALITY (1913) . . **17 C W. N. 1230**

1. ——— **ss. 261, 273,** cl (*2*)—*Carrying on offensive or dangerous trade—Scope of s. 261—Fixing of local limits a condition precedent to prosecution under s. 273—Proceedings of Municipal bodies how to be proved—Presumption as to the regular performance of official acts, if applies to supply deficiency in proof—Evidence Act (I of 1872), ss. 78 (5), 114, illustration (e).* Where the petitioner was convicted under cl. (*2*) of s. 273 of the Bengal Municipal Act for having used without a license certain premises within the Cuttack Municipality for the purpose of storing hides in contravention of s. 261 of the Act, but no resolution passed by the Commissioners at a meeting fixing the local limits within which licenses should be required under s. 261 for offensive or dangerous trades was on the record, nor was there any secondary evidence of any such resolution. *Held,* that the conviction must be set aside, as the prosecution had failed to prove the existence of the resolution and if from other circumstances it were assumed that such a resolution was passed, the prosecution had failed to prove its purport in the manner required by law. The presumption that official acts have been regularly performed [s. 114, Evidence Act, illustration (*e*)] cannot supply the deficiency in the proof. As a rule the contents of documents cannot be proved inferentially. A legitimate way of proving the proceedings of a Municipal body in British India, is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body as laid down in cl 5 of s. 78 of the Evidence Act. The language used in s. 261 of the Bengal Municipal Act is wide enough to enable the Commissioners of a Municipality to apply the section to all places within Municipal limits or the entire area within the Municipal boundaries. *Quære* Whether the penultimate clause of s. 261 empowers the Commissioners to do more than withhold the license in individual cases, each case being considered on its own merits. MOKRAM ALI *v.* THE CUTTACK MUNICIPALITY (1913) . . **17 C. W. N 531**

**BENGAL MUNICIPAL ACT (III OF 1884)—*concld.***

**——— s. 261—*concld.***

2. ——— **ss. 261, 273** (*2*)—*Carrying on offensive or dangerous trade—Scope of s. 261—Fixing of local limits a condition precedent to prosecution under s. 273—Proceedings of Municipal bodies how to be proved—Presumption as to the regular performance of official acts, if applies to supply deficiency in proof—Evidence Act (I of 1872), ss. 78 (5), 114, illustration (e).* Where the petitioner was convicted under cl. 2 of s. 273 of the Bengal Municipal Act for having used without a license certain premises within the Cuttack Municipality for the purpose of storing hides in contravention of s. 261 of the Act, but no resolution passed by the Commissioners at a meeting fixing the local limits within which licenses should be required under s. 261 for offensive or dangerous trades was on the record, not was there any secondary evidence of any such resolution: *Held,* that the conviction must be set aside, as the prosecution had failed to prove the existence of the resolution, and if from other circumstances it were assumed that such a resolution was passed, the prosecution had failed to prove its purport in the manner required by law. The presumption that official acts have been regularly performed [s. 114, Evidence Act, illustration (*e*)] cannot supply the deficiency in the proof. As a rule the contents of documents cannot be proved inferentially. A legitimate way of proving the proceedings of a Municipal body in British India is by a copy of such proceedings certified by the legal keeper thereof or by a printed book purporting to be published by the authority of such body as laid down in cl. (*5*) of s. 78 of the Evidence Act. The language used in s. 261 of the Bengal Municipal Act is wide enough to enable the Commissioners of a Municipality to apply the section to all places within Municipal limits or the entire area within the Municipal boundaries. *Quære.* Whether the penultimate clause of s. 261 empowers the Commissioners to do more than withhold the license in individual cases, each case being considered on its own merits. SYED MOKRAM ALI *v.* THE CUTTACK MUNICIPALITY (1913). **17 C. W. N. 531**

**BENGAL RENT ACT (X OF 1859).**

**——— s. 23** (*6*)—*Tenant dispossessed by landlord—Possessory suit in Civil Court, if lies—Specific Relief Act (I of 1877), s. 9—"Illegal ejectment," meaning of. Per* CURIAM (N. R. CHATTERJEA, *J., contra*). So long as the relation of landlord and tenant is subsisting between the parties, the tenant, if forcibly dispossessed of his land by the landlord, is precluded by cl. (*6*) of s. 23 of Act X of

**BENGAL RENT ACT (X OF 1859)**—*concld.*

———— **s. 23**—*concld.*

1859 from suing under s 9 of the Specific Relief Act in areas where Act X of 1859 applies No distinction can be drawn between the words "forcible dispossession" as used in s 9 of the Specific Relief Act and the words "illegal ejectment" as used in s 23, cl (*6*) of Act X of 1859. *Per* N R CHATTERJEA, *J*—Illegal ejectment which gives rise to a cause of action under s. 23 (*6*) of Act X of 1859 is ejectment nominally in conformity with, but really in contravention of, the provisions of the rent law for the ejectment of tenants by landlords. Where therefore a tenant who has been dispossessed by his landlord sues to recover possession on the strength of his previous possession, s. 23 (*6*) of Act X of 1859, is no bar to such a suit under s 9 of the Specific Relief Act *Janardan Acharjee* v. *Haradhan Acharjee*, *9 W. R. 513*, referred to. *Khetra Nath Ghattak* v. *Peru Bauri*, *15 C. W. N. 387*, distinguished JAMLA SINGH *v.* E. J. KINGSLEY (1913)
**17 C. W. N. 1201**

———— **s. 109**—*Execution against immoveable property of one of several judgment-debtors—Moveable property of all, if must be first exhausted—Arrest of judgment-debtor, if a condition precedent—Decree-holder, if must proceed against moveables first, even when insufficient to satisfy decree.* S 109 of Act X of 1859 contemplates the case of a single execution creditor and a single judgment-debtor; it does not specifically refer to the case of a joint and several decree against a number of judgment-debtors. Where, therefore, a joint and several decree has been passed against several judgment-debtors and the decree-holder elects to proceed against some only of them, he is bound to proceed against their person and moveable property before he can apply for execution against their immoveable property But he is not bound before so applying to proceed against the persons and moveable properties of the other judgment-debtors The decree-holder must first take out execution against the moveable property of the judgment-debtor against whom he wishes to proceed even when the moveable property of the judgment-debtor is insufficient to satisfy the decree in full. When once the moveable property of the judgment-debtor has been exhausted, the decree-holder can proceed against his immoveable property, and he is free to do so in successive applications, and it is not obligatory on him to seek out and proceed, upon each of such applications, against such moveable properties as may have come into the judgment-debtor's possession in the interval. An application for the arrest of the judgment-debtor is not a condition precedent to the decree-holder's proceedings against the immoveable property of the judgment-debtor BHIKARI SUKUL *v* GADADHAR RAMANUJ DAS (1912) . **17 C. W. N. 87**

**BENGAL TENANCY ACT (VIII OF 1885).**

———— *Bengal Rent Act (VIII of 1869)—Annulment of under-tenure—Erroneous rulings, effect of* A tenure was sold after the Bengal Tenancy Act had come into operation in execution of a decree passed before that Act was enforced It was at that time erroneously held by Courts that the provisions of the Bengal Rent Act (VIII of 1869) and not those of the Bengal Tenancy Act governed such sales and the plaintiff had annulled the under-tenures in a manner sufficient under the old Rent Act though not by a formal notice as required by the Bengal Tenancy Act In a suit by an under-tenure-holder for declaration of title and recovery of possession of his under-tenure *Held*, that the provisions of the Bengal Tenancy Act would govern the annulment of under-tenures and that the under-tenure not having been annulled under the provisions of the Bengal Tenancy Act, this annulment was inoperative though based on erroneous decisions of Courts BIRENDRA KISHORE MANIKYA *v.* AHAMMAD ALI (1912)
**17 C. W. N 619**

———— **ss. 3** (*16*), **58** (*3*)

*See* COLLECTOR . **I. L R. 40 Calc. 465**

———— **s. 170** (*1*) **and** (*3*)—*Purchaser of holding, not recognised by landlord, if may make deposit—"Interest voidable on sale," meaning of—"Judgment-debtor," meaning of* A purchaser of a holding who has not been recognised as a tenant by the landlord has an interest in the holding which is voidable on a sale held in execution of a decree for rent against the registered tenant, within the meaning of cl. (*3*) of s 170 of the Bengal Tenancy Act. A person claiming to be a tenant for a period longer than 12 years to the knowledge of the landlord, acquires an interest in the holding within the meaning of sub-s. (*3*) of s. 170 of the Act. Such a person does not come within the description of "judgment-debtor" in sub-s. (*1*) of the section A purchaser of a holding who has been recognised by the landlord as a tenant cannot make a deposit under the section TARAK DAS PAL CHOUDHURY *v.* HARISH CHANDRA BANNERJEE (1912) . . . . . **17 C. W. N. 163**

———— **s. 25.**

*See* LANDLORD AND TENANT.
**I. L. R. 40 Calc. 870**

———— **s. 30.**

*See* ENHANCEMENT OF RENT.
**I. L. R. 40 Calc. 29**

———— **ss. 30** (*b*), **37, 105, 107, 109.**

*See* SUIT . **I. L. R. 40 Calc. 428**

1. ———— **s 49**—*Under-raiyat, ejectment of—Notice to quit—Length of notice—English law, if applicable.* S 49 of the Bengal Tenancy Act prescribes no form of notice to quit nor has it given any indications as to the length of the notice, the reason being that the Act itself protects the under-raiyat from ejectment until the end of the agricultural year next following the year in which

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 49—*concld.*

the notice to quit is served upon him by the landlord. The rules of English law or even of the law prevailing in the Presidency towns concerning the length of the notice, should not be applied in such matters. Where a notice to quit which was served on the under-raiyat on the 10th April 1908 (about the end of Choitra 1314) asked the tenant to leave within the first of Baisak 1315, and the suit was instituted on the 3rd August 1909: *Held*, that the notice was not insufficient in law. HARIFULLAH GANI *v.* BENODE BEHARY MANDAL (1913). **17 C W. N. 932**

2. ——— s. 49 (*b*)—*Under-raiyat holding under an occupancy raiyat, if can be ejected without notice—Landlord, meaning of.* An under-raiyat who is under an occupancy raiyat cannot be ejected by the landlord without notice prescribed by s. 49 (*b*) of the Bengal Tenancy Act. The intervention of a tenure holder between the landlord and the under-tenant makes no difference. *Amirulla* v. *Nazir, I. L. R. 31 Calc. 932*, followed. The term "landlord" includes a person who on the extinction of other rights comes into direct relationship with the tenant or under-tenant as the case may be. RASIK LAL SEN *v* KRISHNA MOHAN MONDAL (1912) . . . **17 C. W. N 781**

——— s. 53—*Agreement to pay rent in monthly kists and interest on each kist from date of its falling due, how far valid—Landlord, if can impose obligation on tenant to pay monthly kist—Interest on arrears—Applicability of the Interest Act.* Where there was a contract between the landlord and the tenant executed after the passing of the Bengal Tenancy Act whereby provision was made for payment of the rent in monthly *kists* and also for payment of interest on each *kist* from the time when it fell due, and the interest so calculated exceeded 12½ per cent. per annum: *Held*, that the landlord was entitled to impose on the tenant an obligation to pay the monthly *kists*. The words of s. 53 of the Bengal Tenancy Act indicate that there may be an agreement in modification of the provision for four equal instalments But having regard to s. 178, sub-s 3, cl. (*h*) of the Bengal Tenancy Act, the landlord was entitled only to the interest secured to him by s. 67 of the Bengal Tenancy Act, the Interest Act not being applicable. *Hemanta Kumari* v. *Jagadindra Nath, I. L. R. 22 Calc. 214*, distinguished. MONOHAR MUKERJEE *v.* KHETTRA NATH SABUI (1913) . . . . **17 C. W. N. 820**

——— s. 69—*Crop, apportionment of—Non-attendance of landlord—Liability of tenant if he appropriates whole crop.* Under s. 69 of the Bengal Tenancy Act if the landlord does not attend to take the share of the crops the remedy of the tenants is by way of an application to the Collector, but if it is found that the tenants have actually appropriated all the crops they are plainly liable to indemnify the landlord. KAMALESHWARI PERSHAD SINGH *v.* KANHARI SINGH (1913). **17 C. W. N. 1159**

BENGAL TENANCY ACT (VIII OF 1885)—*contd.*

——— s. 74.

*See* ABWAB . **I. L. R 40 Calc. 806**

——— s 85—*Permanent under-raiyati lease—Raiyat's holding, purchase of, by landlord in rent decree—Suit for khas possession—ss. 167, 49, 22—Notice.* Where a permanent lease was given to an under-raiyat by a registered instrument and the landlord purchased the holding of the raiyat in execution of a decree for arrears of rent and sued to eject the under-raiyat: *Held*, that the under-raiyati lease was invalid under the provisions of sub-s. (*2*) of s. 85 of the Bengal Tenancy Act and that the landlord was entitled to take *khas* possession by ejecting such under-raiyat without annulling the same under s. 167 and without giving a notice in the terms of s. 49 of the Bengal Tenancy Act. *Held*, also, that the rights of the under-raiyat were not protected by sub-s (*1*) of s. 22 of the Bengal Tenancy Act. *Peary Mohun Mookerjee* v. *Badul Chandra, I. L. R. 28 Calc. 205*, followed. GANGADHAR MONDAL *v.* RAJENDRANATH GHOSE (1913) **17 C. W N. 860**

1. ——— s. 85 (*2*)—*Under-raiyati lease for term exceeding 9 years erroneously registered, if passes title—Previous possession as tenant not claimed—Oral evidence if admissible to prove tenancy—Evidence Act (I of 1872), s. 91.* A sub-lease created by a raiyat for a term exceeding nine years and erroneously registered in contravention of the provisions of s. 85, cl. (*2*) of the Bengal Tenancy Act, is not admissible in evidence to prove the tenancy. Oral evidence to prove the tenancy in such a case is inadmissible under s. 91 of the Evidence Act. Where the sub-lease registered in contravention of s. 85, cl. (*2*) of the Bengal Tenancy Act, was the only title on which the grantee relied so that he could not fall back on any prior possession as tenant or otherwise, his suit to recover *khas* possession was dismissed. *Lala Sorabh Narain Lal* v. *Catherine Sophia, 7 C. W. N. 248, Manick Borai* v. *Bani Charan Mandal, 13 C. L. J. 649*, referred to. Recognition of the plaintiff by the superior landlord as tenant was in the circumstances of no avail to him. JARIP KHAN *v.* DORFA BEWA (1912) . . . . **17 C. W. N. 59**

2. ——— *Permanent under-raiyati lease, registered, effect of—Registration Act (XVI of 1908). s. 49—Registration in contravention of law, effect of.* *Held*, upon are view of authorities, that a permanent sub-lease by a raiyat does not confer any title on the under-raiyat and is inadmissible to prove the tenancy, even when registered, as registration in controvention of the statutory prohibition contained in sub-s (*2*) of s. 85 of the Bengal Tenancy Act is of no effect. *Jarip Khan* v. *Darfa Bewa, 17 C. W. N. 59*, followed. TELAM PRAMANIK *v.* ADU SHEIKH (1913). **17 C. W. N. 468**

——— ss. 95-98.

*See* COMMON MANAGER. **I. L. R. 40 Calc. 150**

**BENGAL TENANCY ACT (VIII OF 1885)—*contd.***

——— **s. 98** (*4*)—*Common Manager, power of —District Judge, jurisdiction of.* Where, subsequent to the appointment of a common manager, the title of an alleged co-owner being disputed had to be decided by a competent Court: *Held*, that the District Judge under cl. (*4*) of s 98 of the Bengal Tenancy Act had jurisdiction to direct the common manager to retain the disputed share of the rent in his hands till the title of the co-owner was adjudicated upon. BHABANGANA DEBYA *v.* HORENDRA NARAIN ROY (1912). **17 C. W. N. 445**

——— **s. 101, cls. 2(*a*), 3.**

*See* ULTRA VIRES **I. L. R. 40 Calc. 123**

——— **ss. 103A, 105, 108A**—*Record-of-rights, final publication of—Settlement of fair and equitable rent, upheld by Special Judge on appeal—Subsequent amendment of record-of-rights—Correction of clerical or arithmetical error—Inherent jurisdiction of Court—Application and scope of s. 108A.* Where after the final publication of the record-of-rights fair and equitable rent was settled by the Settlement Officer by his order, dated the 21st December 1908, in a proceeding under s. 105 of the Bengal Tenancy Act, an appeal by the tenants against which order was dismissed by the Special Judge on the 9th April 1906, the substantial matter in controversy before the Special Judge being whether the rate of rent settled was or was not equitable, no question being raised as to the area, and subsequently it being discovered that the area had been erroneously put down, the Settlement Officer on the 2nd September 1907 amended the record so as to alter the entry about area and the rent payable: *Held*, that the amendment of the record was not under s. 108A of the Bengal Tenancy Act and was not without jurisdiction. The Settlement Officer acted in the exercise of a power inherent in every Court to correct obvious errors or incidental slips in its own record. *Mellor* v. *Swire, 30 Ch. D. 239, 247, Lawrie* v. *Lees, 7 App. Cas. 19, 36, Hatton* v. *Harris* [*1892*], *A. C. 5472, 560*, referred to. *Held*, further, s. 108A of the Bengal Tenancy Act applies only to Revenue Officers especially empowered by the Local Government in that behalf. The section has a much wider scope than the correction of obvious errors and incidental slips in a record-of rights. It entitles the Settlement Officer to correct the record when there has been a *bonâ fide* mistake made either by the Settlement Officer or one of the parties concerned. The section in substance authorises a Settlement Officer to reconsider the matter on the merits. RAJ MOHAN GUHA *v.* ALAM GAZI (1912) . **17 C. W. N. 625**

——— **ss. 104A, 104F, 104H, 104J**—*Record-of-rights, entry settling rent in, when conclusive—Rent, enhancement of, suit for, if maintainable.* An entry in the record-of-rights settling a rent in accordance with the provisions of ss. 104A to 104F, unless altered by means of a suit brought as contemplated by s. 104H, is conclusive, and no

**BENGAL TENANCY ACT (VIII OF 1885)—*contd.***

——— **s. 104A**—*concld*

suit is afterwards maintainable for enhancement of rent on the ground of an excess in area in spite of their having been a stipulation to that effect in the *kabuliyat* executed by the settlement proceedings. S. 113 of the tenant prior to the Bengal Tenancy Act is no bar to the maintainability of a suit of this character and has no application in such circumstances PROSONNA KUMAR ADHIKARI *v.* RACHIMUDDIN HOWLADAR (1912) **17 C. W. N. 153**

——— **s. 104H**—*Suit under, scope of—Necessary parties—Defendants, who should be joined as.* The only relief which the plaintiffs in a suit under s. 104H can claim, is the alteration of an entry in the record-of-rights of the rent settled or the insertion of an entry as to the amount of rent to be settled and prayers in a plaint in a suit under s. 104H to the effect that the plaintiffs may be declared occupancy raiyats and that the entry in the record of-rights to the effect that they are tenure-holders may be declared erroneous and that the names of the defendants recorded as occupancy raiyats may be expunged from the record and the lands in their occupation recorded in the *khatian* as the *nij jote* of the plaintiffs, are entirely foreign to a suit under s. 104H. A suit under s. 104H should have as defendant only the person benefited by the rent entry or by the omission to make a rent entry as the case may be, and in a suit brought for the determination of the question whether the rent entry showing the amount of rent payable by the plaintiffs to the Secretary of State for India is or is not correct, the Secretary of State for India is the proper party to be made defendant and the under-tenants subordinate to the plaintiffs are not necessary parties defendants. Two conditions must be satisfied in order that a party may be considered a necessary party defendant, namely, *first*, there must be a right to some relief against him in respect of the matter involved in the suit; and *secondly*, his presence is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit; and a person who is only indirectly or remotely interested is not a necessary party. JOGENDRANATH SINGH *v.* SECRETARY OF STATE FOR INDIA (1912) . **17 C. W. N. 835**

1. ——— **s. 105**—(*Before amendment by Act I E. B. and A. C. of 1908*)—*Record-of-rights—Tenants settled by trespasser entered as raiyats—Recovery of land by owner —Latter if may apply for settlement of rent—Relation of landlord and tenant, how created.* Where land on which tenants were settled by zemindar A was adjudged by the Civil Court to be within the ambit of the zemindari of B, and the tenants were entered in the record-of rights as raiyats on the land: *Held*, that an application for settlement of rent under s. 105, Bengal Tenancy Act (before amendment by Act I E. B. and A. C. of 1908) by B against the tenants was competent. Tenancy in this country is created not only by contract but also by occupation in

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— s. 105—*concld.*

the case of agricultural land. *Nityanund Ghose* v. *Kishen Kishore, W. R (1864), Act X Rulings, 82. Surnomoyee* v. *Dina Nath, I. L R 9 Calc 908, Lukhee Kanto* v. *Sumeruddi, 21 W. R 208, Lalun Monee* v *Sonamonee, 22 W R. 334, Azim Sirdar* v. *Ram Lal, I. L R 25 Calc. 324, Binad Lal* v. *Kalu Pramanik. I L. R 20 Calc 708*, referred to. Consent of both parties is not essential to establish the relation of landlord and tenant. In this case there was such consent as between A and the tenants, and B merely stepped into A's shoes by operation of law. KALI PRASUNNO DAS *v.* BHAGWAN MALI (1912) . **17 C. W. N. 348**

2 ——— *Proceedings, if lies, only when no rent previously agreed upon—Tenant, recorded as occupancy raiyat, if may claim fixity of rent by proof of uniform payment—Presumption, if may be rebutted by collection papers—Admissibility of same as independent evidence—Evidence Act (I of 1872), ss. 32. 34* S 105 of the Bengal Tenancy Act is not restricted in its application only to cases where no rent has been fixed by agreement of parties. Notwithstanding the final publication of a record-of-rights in which the tenants are entered as occupancy raiyats, they are entitled in a proceeding under s. 105 of the Bengal Tenancy Act to rely on the presumption mentioned in s. 50, cl. (2) of the Act if they have produced rent-receipts for 20 years showing payment of a uniform rate of rent. When the landlord's collection papers are produced to rebut the presumption of fixity of rent, they are, under s. 34 of the Evidence Act, admissible as corroborative and not independent evidence. The law as embodied in s. 34 of the Evidence Act and s. 42 of Act II of 1855 though not identical is the same in this respect. *Belayet Khan* v. *Rash Behary, 22 W. R. 549*, not followed. *Surnomoyi* v. *Johur Mohomed Nasyo, 10 C. L R. 545*, followed. If evidence is adduced to make the account papers admissible as statements under s 32 of the Evidence Act, corroboration would not be needed in terms of s. 34. *Rampyarabai* v. *Balaji Shridhar, I. L. R. 28 Bom. 294, Dukha Mondal* v. *Grant, 16 C. L. J. 24*, followed. AKTOWLI *v.* TARAK NATH GHOSE (1912) . . . . **17 C. W. N. 774**

——— s. 106—*Revenue officer, if can pass decree for possession—Suit transferred to Civil Court* S. 106 of the Bengal Tenancy Act provides for the institution of suits before revenue officers and indicates the points that can be decided by the revenue officer but it does not vest the revenue officer with power to pass a decree for possession. Where suits under s. 106 of the Bengal Tenancy Act were not heard by the revenue officer but were transferred to a competent Civil Court for trial under the 1st proviso to that section: *Held*, that the mere fact that they were transferred to a Court which in its ordinary jurisdiction might have been passed a decree for possession, could not widen the permissible scope of these particular suits NILMANI KUMAR *v.* KEDAR NATH GHOSH (1913) . . **17 C. W. N. 750**

BENGAL TENANCY ACT (VIII OF 1885)—*contd*

——— s. 106—*concld.*

——— s. 147A —*Decree for enhanced rent passed on compromise—Amount of previous rent not ascertained—Tenant, if bound by decree—Irregularity or nullity* A decree for rent passed in accordance with a compromise, in contravention of the provisions of s 147 A of the Bengal Tenancy Act, *i.e.*, without recording evidence to show what the amount of rent was before the dispute arose, is made without jurisdiction and the tenant is not bound to have it set aside As the tenant cannot waive the irregularity, it amounts, according to the test laid down in *Holmes* v. *Russel, 9 Dowl 487*, to a nullity. SARJUGSHARAN *v.* LAL DUKHIT MAHATO (1913) . **17 C. W. N. 496**

——— s. 148, cl (*h*)

*See* " LANDLORDS' INTEREST," MEANING OF . **I. L. R. 40 Calc. 462**

——— s. 159—*Suit for rent of holding against one of several heirs of the raiyat—Decree, rent decrees and sale if passes whole tenure—One tenant, when representative of the rest—Question of fact* Although under s. 43 of the Contract Act a landlord may bring a suit for the whole rent of the holding against one of several raiyats, all the tenants of the holding must ordinarily be joined as parties in order that the decree and the sale in execution of it may pass the entire holding and not merely the right, title and interest of the judgment-debtor. Where, however, one of a number of tenants is put forward by the rest as their representative he can be regarded as the sole tenant for the purposes of a suit for the arrears of rent within Ch. XIV of the Bengal Tenancy Act Whether one of several tenants can be regarded as a representative of the rest must depend on the cirumstances of each case, and is largely, if not essentially, a question of fact. *Doolar Chand Sahu* v. *Chabeel Chand, L R 6 I. A. 47*, distinguished CHAMATKARI DASSI *v* TRIGUNA NATH SARDAR (1913) . **17 C. W. N. 833**

——— ss 160, 165, 167—*Se-putni if a protected tenure—Dur-putni extinguished under s. 167—Effect on se-putnidar who has not been ejected—Right to collect rent.* A *se-putnidar*, who has not been ejected in a proceeding under s. 167 of the Bengal Tenancy Act, is not entitled to continue collecting rents from the tenants when the *dur-putni* under which he holds has been extinguished under that section. On the extinction of the *dur-putni* the tenants became liable to pay their rent directly to the *putnidar* The extinction of the *dur-putni* necessarily carries with it the extinction of the *se-putni* which is not a protected tenure under the definition in s 160 of the Bengal Tenancy Act. MAKHAM DAS KULI *v.* RAM CHANDRA GOSSWAMI (1912) . . . . **17 C. W. N. 1064**

——— s. 167—" *Date of sale* ", *meaning of*—" *Notice* " *if means express notice.* The words,

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——— **s. 167**—*concld.*

"date of sale." in s 167 of the Bengal Tenancy Act means the date on which the sale of the holding or tenure has actually taken place and not the date of the confirmation of the sale If the purchaser has had knowledge or intimation of an incumbrance, that would be sufficient notice of it within the meaning of s 167. When the purchaser of an occupancy holding at a rent sale had intimation that persons other than the judgment-debtor were cultivating the land · *Held*, that the lower Appellate Court was justified in holding that he had "notice of the incumbrance these persons had on the holding" YUSUF GAZI *v* ASMAT MOLLAH (1912) . **17 C W. N 440**

——— **s. 171**—*Deposit under—Court making no enquiry as to depositor having interest voidable on the sale—Revision—Civil Procedure Code (Act V of 1908), ss 47, 115—Material irregularity—Appeal* Where upon an application made under s. 171 of the Bengal Tenancy Act it was ordered: "the applicant applies for depositing the claim in Court; he may deposit the claim within 2 days;" but there was no enquiry as to whether the depositor had any interest voidable on the sale and no decision upon the point: *Held*, that the Court in passing this order acted with material irregularity in the exercise of its jurisdiction and the High Court could interfere under s. 115 of the Civil Procedure Code. *Held*, also, that the above order was not appealable as the original application, having been made by a person not a party to the suit, did not come within the provisions of s 47 of the Civil Procedure Code. *Hira Lal Ghose* v. *Chandra Kanta Goose, I. L. R 26 Calc 539*, referred to. *Quære* Whether under the provisions of s. 153 of the Bengal Tenancy Act the District Judge had revisional jurisdiction in the matter. GOBINDA SUNDAR SINHA CHOWDRY *v* CHAND MEAH (1912) . . . **17 C. W. N. 602**

——— **s. 174**—*Order refusing to set aside sale on the ground of shortness of deposit, if an order on a question of title—Appeal, if lies—Poundage-fee if must be deposited by judgment debtor, to have sale set aside.* The decision of the Full Bench in *Kali Mondal* v. *Ramsarbaswa Chuckerburty, I L. R. 32 Calc. 957*; *9 C. W N 721*, has not been completely superseded by the explanation subsequently added to s 153 of the Bengal Tenancy Act. Where therefore an application under s 174 of the Bengal Tenancy Act to set aside a sale in execution of a decree for rent was rejected by a Munsif who had final jurisdiction in the case under s. 153 on the ground that the amount deposited was short: *Held*, that the decision of the Munsif was an order deciding a question relating to the title to land as between parties having conflicting titles thereto and was therefore appealable. *Semble* · The amount to be deposited under s. 174, Bengal Tenancy Act, does not include poundage fee. *Raghubar Dayal* v. *Jadunandan Messir, 15 C. L. J. 89, 16 C W. N 736*, referred to. BENI MADHAB RAY *v* BISSESSUR BHARTI (1911) **17 C. W N. 84**

**BENGAL TENANCY ACT (VIII OF 1885)**—*contd*

——— **s. 174**—*concld.*

——— **s 180** (*1*)—*Chur land held continuously for over 12 years but during part thereof as ijaradar also—Commencement of possession as raiyat.* Where the plaintiffs came into possession of certain *chur* lands as raiyats in 1884 and continuously held possession thereof till 1908, but from 1890 to 1898 they held the same and other lands also as *ijaradars* · *Held*, that the plaintiffs acquired occupancy right in the land under s 180, sub-s. (*1*) of the Act. The effect of the holding of the *ijara* from 1890 to 1898 discussed *Mukandi Lal* v. *Crowdy, 8 B. L. R App 95, Savi* v. *Panchnun, 25 W. R 503, Lal Bahadur* v *Solano, I. L. R 10 Calc. 45, Maseyk* v. *Bhagabati, I L. R. 18 Calc 121, 123*, referred to. JASIMUDDIN SHEIKH *v.* BENI MADHAB DAS (1913) . . . **17 C. W. N. 881**

1. ——— **Sch. III, Art. 3**—*Rent sale—Purchase by sole landlord—Suit by tenant to recover possession alleging decree to be fraudulent—Limitation.* Where the sole landlord took possession of a holding as purchaser at a sale thereof in execution of a rent decree, the tenant was not dispossessed by the landlord within the meaning of Art. 3 of Sch III of the Bengal Tenancy Act. Dispossession effected by the act of delivery of possession by the Court is not dispossession by the landlord within the meaning of Art. 3 of Sch. III of the Bengal Tenancy Act *Aminuddin* v *Ulfatunissa Bibi, 9 C.L.J. 131*, dissented from. KAMALDHARI THAKUR *v.* RAMESHUR SINGH BAHADUR (1913) **17 C. W. N. 817**

2. ——— *Suit for possession of land by raiyat or under-raiyat—Relationship of landlord and tenant—Special rule of limitation when applies.* The plaintiff's suit was for recovery of possession of a holding governed by the Bengal Tenancy Act which had vested in her on the death of her husband. The plaintiff's aunt who came to live with her after the death of plaintiff's husband, brought the defendants on to the land to assist in its cultivation The defendants by their conduct compelled the plaintiff to leave the holding and take shelter somewhere else. In the plaint there was a suggestion of collusion on the part of the plaintiff's landlord: *Held*, that as between the plaintiff and the defendants there was no relationship of landlord and tenant so that as between them the special law of limitation embodied in Art. 3, Sch. III of the Bengal Tenancy Act, did not apply. There having been in fact no dispossession by the landlord, the mere suggestion that the landlord had a hand in the ouster did not bring the suit within Art. 3, Sch III of the Act. BASANTA KUMARY *v* NANDA RAM KAIBARTA DASS (1913) **17 C. W. N. 1149**

——— **Sch. III, Art. 6**—*Rent-suit, instalment decree in, passed by consent—Execution—Limitation*

**BENGAL TENANCY ACT (VIII OF 1885)—*concld.***

**——— Sch. III, Art 6—*concld.***

*—Period, if may be extended by agreement.* Art 6 of Sch. III of the Bengal Tenancy Act applies to an application to execute a decree passed upon consent, in a suit for rent by the sole landlord against his tenant, directing payment by instalments. Limitation therefore ran from the date of the decree and not from the date of payment of the last or any other instalment. *Baikuntha Nath* v. *Aghore Nath, I. L. R. 21 Calc. 387, Thakamoni* v. *Mohendra Nath, 10 C. L. J. 463, K. B Dutt* v. *Gosto Behary, 16 C. L. J. 379 : 16 C. W. N. 1006,* referred to. The parties to a suit cannot contract themselves out of the law of limitation and extend the period prescribed thereby. *Kristo Kamal* v. *Hurree Sardar, 13 W. R. F. B. 44, Lalla Ram Sahay* v. *Dodraj Mahto, 20 W. R. 395, Nabar Narrya* v. *Dhan Mahomed, I. L. R. 5 Calc. 820 . 6 C. L. R 136,* referred to. KHETRO MOHAN CHATTERJEE *v.* MOHIM CHANDRA DAS (1913) . **17 C. W. N. 518**

**BEQUEST.**

*See* HINDU LAW—ADOPTION
**I. L. R. 37 Bom. 107**

——— conditions of—

*See* WILL . **I. L. R. 40 Calc. 192**

**BETROTHAL.**

*See* HINDU LAW—WILL
**I. L. R. 37 Bom. 18**

**BHAGDARI VILLAGE.**

——— *Lands forming part of road-ways in village—Ownership of Government—Bhagdar has no right to tether cattle on such lands.* The plaintiff, a *bhaghdar,* owned a house in a village which was *bhagdari.* In front of his house lay a peice of open ground, which was part of a way or lane, leading directly from the main public road to the collection of houses situate round about the plaintiff's house. It was open to the villagers and used by them freely upon all occasions. The plaintiff claimed a right to tether his cattle upon the land in question: *Held,* that the land in question, forming a portion of a public road-way, was the property of Government. UMAR AMANJI *v.* SECRETARY OF STATE FOR INDIA (1912).
**I. L. R. 37 Bom. 87**

**BHANG.**

*See* WADHWAN CIVIL STATION.
**I L. R. 37 Bom. 152**

**BHARWAD.**

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S. 2.
**I. L. R. 37 Bom. 398**

**BOMBAY ÁBKÁRI ACT (BOM. V OF 1878).**

*See* ABKARI ACT, BOMBAY.

**BOMBAY ACTS.**

——— **1863—VI.**

*See* PUBLIC CONVEYANCES ACT.

——— **1869—XIV.**

*See* BOMBAY CIVIL COURTS ACT.

——— **1874—III.**

*See* HEREDITARY OFFICES ACT.

——— **1876—X.**

*See* REVENUE JURISDICTION ACT.

——— **1878—V.**

*See* ABKARI ACT, BOMBAY.

——— **1879—V.**

*See* LAND REVENUE CODE, BOMBAY.

——— **1879—XVII.**

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT .

——— **1880—I.**

*See* KHOTI SETTLEMENT ACT.

——— **1886—V.**

*See* HEREDITARY OFFICES AMENDMENT ACT . .

——— **1887—IV**

*See* PREVENTION OF GAMBLING ACT.

——— **1888—VI.**

*See* GUJARAT TALUKDARS ACT.

——— **1901—III.**

*See* DISTRICT MUNICIPALITIES ACT.

——— **1901—VI.**

*See* LAND REVENUE CODE, BOMBAY.

——— **1905—I.**

*See* COURT OF WARDS ACT, BOMBAY.

——— **1906—II.**

*See* MAMLATDARS' COURTS ACT.

**BOMBAY CIVIL COURTS ACT (XIV OF 1869)**

——— **s. 32.**

*See* COURT OF WARDS ACT (BOM. ACT I OF 1905), S. 3 (*c*).
**I. L. R. 37 Bom. 313**

**BOMBAY HIGH COURT (APPELLATE SIDE) RULES.**

——— **Rule 65.**

*See* BOMBAY REGULATION II OF 1827, S. 52 . . **I. L. R. 37 Bom. 303**

**BOMBAY PREVENTION OF GAMBLING ACT (BOM. IV OF 1887).**

**ss. 5, 6 and 7.**

*See* GAMBLING . **I. L. R. 37 Bom 402**

**BOMBAY REGULATION (II OF 1827).**

———— s. 52—*Pleaders' Act (I of 1846), ss. 6 and 7—Bombay High Court Appellate Side Rules. Rule 65—Pleaders' fees—Taxation—Appeal from a preliminary decree deciding status of agriculturist—Practice.* The pleaders' fees in the High Court, in an appeal from a preliminary decree determining the status of an agriculturist, must be assessed at Rs. 30 under Rule 65 of the Bombay High Court Appellate Side Rules, and not on the subject-matter in dispute, under s. 52 of the Bombay Regulation II of 1827 or under s. 6 of Act I of 1846. MANOHAR RAMCHANDRA *v* THE COLLECTOR OF THE NASIK DISTRICT (1912).
**I. L. R. 37 Bom. 303**

———— s. 56—*Pleader—Misbehaviour—Not limited to professional misconduct—High Court—Disciplinary jurisdiction* The term "misbehaviour" in s 56 of the Bombay Regulation II of 1827 is not restricted to misbehaviour in the strict course of a pleaders' professional duties, but includes general misbehaviour. There is no reason to suppose that the Legislature intended in this matter to enact a laxer rule of practice in India than the rule which prevails in England. GOVERNMENT PLEADER, BOMBAY *v.* ANNAJI NARAYAN DESHPANDE (1912).
**I. L. R. 37 Bom. 354**

**BOMBAY REGULATION (V OF 1827).**

———— s. 1.

*See* LIMITATION **I. L. R. 37 Bom. 231**

**BONÂ FIDE ACT.**

———— by Collector—

*See* ABKARI ACT (BOM. ACT V OF 1878), SS. 32, 67 . **I. L. R. 37 Bom. 101**

**BOND.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 75 . **I. L. R 35 All. 455**

**BOOKS OF REFERENCE.**

———— *Reliance by Court on Books of Reference—Parties should know of it at the trial—Practice.* Whenever a Court relies on a book of reference, such as a work on medical jurisprudence, it should be made known at the trial to the parties, so that they may have an opportunity of adducing evidence or argument on the point. *Durga Prasad Singh* v. *Ram Doyal Chaudhuri, I. L. R. 38 Calc. 153,* referred to. WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912) . . . **I. L. R. 40 Calc. 898**

**BOUGHT AND SOLD NOTES.**

*See* ARBITRATION **I. L. R. 40 Calc. 219**

**BREACH OF CONTRACT OF MARRIAGE.**

*See* HINDU LAW—WILL.
**I. L. R. 37 Bom. 18**

**BRITISH INDIA.**

*See* WADHWAN CIVIL STATION.
**I. L. R. 37 Bom. 152**

**BUILDING PLANS.**

———— sanction of—

*See* MUNICIPAL CORPORATION.
**I. L. R. 40 Calc. 836**

**BURDEN OF PROOF.**

*See* CIVIL PROCEDURE CODE (1908), S. 60(c) . **I L. R. 35 All. 307**

*See* ONUS OF PROOF.

*See* HINDU LAW—ALIENATION.
**I. L. R. 40 Calc 288**

**BURMA TOWN AND VILLAGE LANDS ACT (BURMA IV OF 1898).**

———— s. 41 (*b*).

*See* JURISDICTION OF CIVIL COURT.
**I. L. R. 40 Calc. 391**

## C

**CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)**

———— ss. 3 (*32*), 408, 574, 575—*Bustee land—Debutter property—Shebait not in possession if an "owner"* When the petitioner, being one of several *shebaits* who had his last turn of workship in 1906 and had since then no hand in the management of the *debutter* properties, was convicted under s $\frac{574}{408}$ of the Calcutta Municipal Act for non-compliance with a notice under s. 408 calling upon him to carry out certain improvements in a bustee which was one of the *debutter* properties: *Held*, that the petitioner was not an owner within the meaning of s. 3, sub-s. (*32*) of the Act inasmuch as though he might be regarded as a manager for the deity, yet he was not receiving the rent. RATNENDRA LAL MITTER *v.* CORPORATION OF CALCUTTA (1913) . . **17 C. W. N. 1084**

———— ss. 3 (*35*), 361, 416 (*1*), (*5*), 419—*Roadway in bustee land—Public exercising right of way—Applicability of s 361—Definition of "street" if includes "passage"—Conditions necessary to create public right of way—Criminal Procedure Code (Act V of 1898), s 439—Order of acquittal, revision of.* A roadway less than 20 ft wide was originally made as part of a *bustee* and in accordance with the standard plan approved by the General Committee. The owner of the *bustee* sold the land covered by the *bustee* to various persons who built residences on the land At the instance of the Chairman of the Corporation, the opposite party whose house abutted on the roadway was prosecuted for failure to comply with a direction under s 361 of the Act to improve the roadway. The Magistrate found that the public exercised a right of way over the road and acquitted the accused.

**CALCUTTA MUNICIPAL ACT (BENG. III OF 1899)**—*concld.*

——— s. 3—*concld.*

There was no agreement between the General Committee and the owner as to the road being made public *Held*, that the roadway in question was a private street to which s 361 of the Calcutta Municipal Act applied. That the definition of the word "street" in the Act includes a passage and the fact that the roadway was not 20 feet wide did not make s 361 inapplicable. That the meaning of s. 416 read with s. 419 is that a street like the one in question remains a private street until the owner of the *bustee* initiates a proceeding under s. 419 That in order to create a public right of way over a road there must be a dedication by the owner and in the present case under s 416 (*1*) the owner could not dedicate without the consent of the General Committee. That the Chairman of the Corporation was competent to initiate the prosecution. CORPORATION OF CALCUTTA *v* MAHAMAYA DEBI (1913) **17 C. W. N. 1250**

——— ss. 375, 377.

*See* MUNICIPAL CORPORATION.
**I. L. R. 40 Calc 836**

**CALCUTTA POLICE ACT (BENG. IV OF 1866).**

——— ss. 62A (*4*), 102A.

*See* PROCESSION **I. L. R. 40 Calc. 470**

**CALCUTTA SUBURBAN POLICE ACT (BENG. II OF 1866).**

——— ss. 39A (*4*), 49A.

*See* PROCESSION . **I. L. R. 40 Calc. 470**

**CANDIDATE.**

*See* PLEADERSHIP EXAMINATION.
**I. L. R. 40 Calc. 588**

**CARRIERS.**

*See* CARRIERS ACT.

——— *Carriers Act (III of 1865), ss. 6, 7, 8, 9—Liability of steamer company for goods damaged in transit—Onus of proof—Negligence or criminal act of company, its servant, or agent presumed.* Where a steamer company forwarded a consignment of four tins of oil on terms contained in what is known as an owner's risk-note, after receiving the tins in good condition, and the consignee refused to take delivery as one tin was cut open and partly empty and another was quite empty, and brought a suit for the value of the oil *Held*, that the steamer company, being a common carrier, was in a different position from railway companies who are only bailees, coming under ss. 151, 152 and 161 of the Contract Act. Its liability is, therefore, that of an insurer subject to certain exceptions under s. 6 of the Carriers Act. *Held*, also, that the onus was, as a matter of course, on the steamer company as common carriers, even in a case covered by special contract

**CARRIERS**—*concld.*

to disprove negligence, as the loss of the goods is *primâ facie* evidence of negligence or criminal act of the carrier, his servants or agents. *Choutmul Doogur* v. *The Rivers Steam Navigation Co*, *I. L. R. 24 Calc. 786*, followed. *Irrawaddy Flotilla Co. v. Bugwandas, I. L R 18 Calc. 620, Lalchand Sew Karan* v. *E. I Ry Co*, *17 C W. N 635n*, referred to *Sheobarut Ram* v *B. and N.-W. Ry Co*, *16 C. W. N 766*, not followed INDIA GENERAL STEAM NAVIGATION COMPANY *v.* BHAGWAN CHANDRA PAL (1913) . . . **I. L. R. 40 Calc. 716**

**CARRIERS ACT (III OF 1865).**

——— ss. 3, 4, 8, 9—*Mutka silk of over Rs 100 in value sent by steamer—Loss owing to negligence—Merchandise sent as "luggage" and value and description not declared and excess charge not paid—Carrier if liable in damages* Where goods of the description contained in the schedule referred to in s. 3 of the Carriers Act and exceeding in value Rs 100 were lost owing to the negligence of a steamer company *Held*, that the steamer company were liable under s 8 of the Act to make compensation to the consignor, although the value and description of the goods were not declared under s 3 of the Act and the increased risk of carrying them was not paid for at higher rates under s. 4 of the Act *Velayat Hossein* v. *Bengal and North-Western Railway Co., I. L. R. 36 Calc 819*, referred to The steamer company were liable although the goods were delivered as "luggage," as the Act makes no distinction between "personal luggage" and goods or merchandise. *Shaik Roheemulla* v. *Palmer, Coryton's Rep. 133*, not followed. Under s. 9 of the Carriers Act the onus of proving negligence is not on the plaintiff. *Sheobarut Ram* v. *The Bengal North-Western Railway Co*, *16 C W N. 766*, distinguished. INDIA GENERAL NAVIGATION AND RY. CO., LD, *v* GOPAL CHANDRA GUIN (1913).
**17 C. W. N. 970**

——— ss. 6 to 9.

*See* CARRIERS . **I. L. R 40 Calc. 716**

——— s. 9.

*See* RAILWAY. . **I. L. R. 37 Bom. 1**

**CAUSE OF ACTION.**

——— s. 34.

*See* AGRA TENANCY ACT (II OF 1901), s 34 . . **I. L. R. 35 All. 512**

——— abatement of—

*See* PARTIES—RELIGIOUS ENDOWMENT.
**I. L. R. 40 Calc. 323**

**CENTRAL PROVINCES GOVERNMENT WARDS ACT (XVII OF 1885).**

——— s. 18—*Application of Act—Hindu joint family estates—Application by managing members of joint family for superintendence of estate by Court of Wards—Mitakshara law, family governed by—Sanction by Chief Commissioner to mortgage of estate under charge of Court of Wards—Suit on*

**CENTRAL PROVINCES GOVERNMENT WARDS ACT (XVII OF 1885)** —*contd.*

——— **s. 18**—*contd*

*mortgage after relinquishment by Court of Wards.* The Central Provinces Government Wards Act (XVII of 1885) applies to the superintendence by the Court of Wards of the estates of Hindu joint families, as well as to the separate estates of Hindus and others situate within the territories administered by the Chief Commissioner of the Central Provinces. The two managing members of a Hindu joint family governed by the Mitakshara law, and zamindars of the family estate of Baherakhedi in Hosangabad, which had become overburdened with debt, applied under the above Act to the Deputy Commissioner, as the Court of Wards for the district, to assume superintendence of the joint family estate with a view to liquidate the debts *Held*, that in making the application they acted within their power and authority as managing members, and in the interest of all the members of the joint family; and that inasmuch as no member had in the property any definite undivided share [*Garibullah* v. *Khalak Singh, I L R 25 All 407, L. R 30 I A. 165*, and *Appovier* v *Rama Subba Aiyan, 11 Moo I. A. 75*] what was taken over by the Court of Wards on assuming superintendence of the estate was the property of all the members of the joint family The Chief Commissioner had power to sanction the assumption by the Court of Wards of the whole of the joint family property, whether the application was made by the managing members only, or by all the members of the family: and the acts of the Court of Wards in dealing with the property after charge of it was assumed, bound the interest of all the members The sanction of the Chief Commissioner to a mortgage of such property as required by s. 18 of Act XVII of 1885 may be an implied sanction; it is not necessary that the mortgage to be made by the Court of Wards should be submitted to the Chief Commissioner for his sanction, nor that the sanction should be to the precise terms of the mortgage deed. By the terms of a mortgage made in 1891 by the Court of Wards in favour of the respondents (plaintiffs) on the security of the joint family estate, the mortgage money (Rs 1,20,000 was repayable with interest by annual instalments of Rs 10,000 extending over more than 20 years, and in the event of Rs 30,000 becoming overdue, the Court of Wards covenanted to recover such sum by sale or otherwise of sufficient of the mortgaged property If it was found impossible to continue to manage the estate, the Court of Wards was either to sell up the entire property and devote the proceeds to the liquidation of the debt, or make over the estate to the mortgagees in satisfaction of their claim In the event of the management being relinquished before the debt was liquidated in the ordinary course, the Court of Wards was to liquidate the debt remaining due by the sale of such portion of the property as might be necessary The sum borrowed was applied to pay off the debts on the property.

**CENTRAL PROVINCES GOVERNMENT WARDS ACT (XVII OF 1885)** —*concld.*

——— **s 18**—*concld*

Only Rs 16,000 was repaid up to 1893, and since then no instalment had been paid, the Court of Wards, owing to unforeseen circumstances, finding its impossible to pay more, either of principal or interest and in March, 1902, the Court of Wards after giving the mortgagees notice that the relinquishment by it of the management had been sanctioned, offered to make over to them the mortgaged property in satisfaction of their claim "excepting the cultivating rights of *sir* land which are to be reserved for the maintenance of the wards," which the mortgagees declined as not being a compliance with the terms of the mortgage deed. In June, 1902, the Court of Wards relinquished the management of the estate without selling it or transferring it to the mortgagees. In a suit brought in 1904 on the mortgage for sale and recovery of the amount due: *Held* (affirming the decisions of the Courts in India), that, on the terms of the mortgage and under the circumstances of the case, the whole sum payable on the mortgage had become due on the relinquishment of the management by the Court of Wards, and the usual decree for sale was made GULAB SINGH *v.* GOKULDAS (1913) . **I. L. R. 40 Calc. 784**

**CENTRAL PROVINCES LAND REVENUE ACT (XVIII OF 1881).**

——— **ss. 136G, 136H**—*Appeal if lies to High Court against decision of Commissioner on appeal—Deputy Commissioner, if a District Court.* There is no appeal to the Commissioner against the decision of a Deputy Commissioner passed under s. 136G of the C P. Land Revenue Act and no appeal lies to the High Court against an order of a Commissioner passed on appeal against such decision of a Deputy Commissioner. GAJRAJ DAS *v.* KRIPASINDHU DAS (1912) . . . . **17 C W. N. 155**

**CENTRAL PROVINCES TENANCY ACT (XI OF 1898).**

——— **ss. 46, 47, 95**—*Unauthorised transfer by an occupancy tenant—S. 47 if the only provision for avoiding such transfer—Jurisdiction of Civil Court—Effect of s. 95* Where an occupancy tenant governed by the Central Provinces Tenancy Act, sold half of the share of his holding to the defendant and subsequently mortgaged the other half to another person with possession and the plaintiff landlord applied to the Revenue Officer under s 47 of the Act for possession of the land and was given a decree in respect of the mortgaged moiety but as to the moiety which had been sold it was held that the plaintiff's application was out of time having been made more than two years after the date, and the plaintiff subsequently brought a suit in the Civil Court for precisely the same relief as to the moiety which was sold: *Held*, that having lost his case under s. 47, the plaintiff could not again bring a suit in a Civil Court for the

**CENTRAL PROVINCES TENANCY ACT (XI OF 1898)—*concld.***

——— s. 46—*concld.*

same relief. S. 47 enacts the only method by which a transfer made by an occupancy tenant in contravention of s. 46 of the Act may be avoided. *Ichaiam Sing* v. *Nilmony Bahida, 7 C. L. J. 499*, followed. Under s. 95 the jurisdiction of the Civil Court is excepted in the case of ss. 46 and 47. BAIKANTHA NATH MISRA *v.* LABOO NAG (1912) . . . . **17 C. W. N. 621**

**CERTIFICATE.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL. (*5*).
**I. L. R. 37 Bom. 559**

**CERTIFICATE OF COLLECTOR.**

*See* PENSIONS ACT (XXIII OF 1871), S. 4.
**I. L. R. 37 Bom. 91**

**CERTIFICATE OF INCORPORATION.**

*See* COMPANIES ACT (VI OF 1882), SS 6, 40, 41 . . **I. L. R. 40 Calc. 1**

**CERTIFICATE OF SUCCESSION.**

*See* SUCCESSION CERTIFICATE

*See* SUCCESSION CERTIFICATE ACT.

**CERTIORARI, WRIT OF.**

——— *Power of High Court to issue—Income-tax Act (II of 1886)—Criminal Procedure Code (Act V of 1898), s 476, when order may be passed under.* (i) *Per* SUNDARA AYYAR, *J*.—The High Court has no jurisdiction to issue a writ of *certiorari* on an officer beyond the limits of its jurisdiction. *Per* SADASIVA AYYAR, *J*.—The High Court has such jurisdiction. *Per* CURIAM. (ii) A Divisional Officer hearing appeals under the Income-tax Act (II of 1886) is a Court. (iii) Presuming the High Court to have jurisdiction, a petition may be entertained by the High Court to set aside the order of such Court passed under s. 476 of the Criminal Procedure Code (Act V of 1898), it not being necessary for the petitioner to have appealed to the Revenue Board. (iv) The Divisional Officer's order under s. 476, Criminal Procedure Code, was not bad for want of jurisdiction as being passed long after the close of the income-tax proceedings. (v) Even assuming that the order is bad for want of jurisdiction and that the High Court has itself jurisdiction to proceed by way of *certiorari*, the High Court is not bound to interfere and quash the proceedings if on the merits petitioner has no case. Petition dismissed. *In re* NATARAJA IYER (1913) . . . **I. L. R. 36 Mad. 72**

**CESS.**

*See* LANDLORD AND TENANT.
**I. L. R. 35 All. 19**

**CHAIRMAN.**

*See* MUNICIPAL CORPORATION.
**I. L. R. 40 Calc. 886**

**CHANGE OF ATTORNEY.**

*See* ATTORNEY AND CLIENT.
**I. L. R. 40 Calc. 386**

**CHARGE.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 250.
**I. L. R. 37 Bom. 376**

*See* INTEREST . **I. L. R. 40 Calc. 514**

*See* LIMITATION ACT (IX OF 1908), SCH. 1, ART. 132 . **I. L. R. 35 All. 185**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), SS. 59, 100.
**I. L. R. 35 All. 164**

**1.** ——— *Omission to frame charge—Rioting—Causing hurt—Conviction for an offence other than the one charged with—Error of law—"Error, omission or irregularity"—Criminal Procedure Code (V of 1898), ss. 535, 537 (a)—Practice.* Ss. 535 and 537 (*a*) of the Criminal Procedure do not apply to a case where the accused is charged with one offence and convicted of another—totally different to the one he was charged with. S. 233 is mandatory for every distinct offence of which any person is accused there shall be a separate charge, and every charge shall be tried separately, except in the case mentioned in ss. 234, 235, 236 and 239 of the Code S. 236 refers to a series of acts which are of such a nature that it is doubtful which of the several offences the facts constitute. To convict an accused of murder on a charge of rioting or to commit him to the Sessions without framing a charge, would be not merely an irregularity but an error of law vitiating the trial. SITA AHIR *v* EMPEROR (1912) . . . . **I. L. R. 40 Calc. 168**

**2.** ——— *Misjoinder of charges—Joint trial on charges of criminal breach of trust and falsification of accounts committed in separate transactions—Criminal Procedure Code (Act V of 1898), ss. 233, 234, and 235—Penal Code (Act XLV of 1860), ss. 408 and 477A.* A charge of criminal breach of trust of a sum of money can be tried under s. 235 (*1*) of the Criminal Procedure Code, at the same time, with one of falsification of accounts made to conceal the act of misappropriation as part of the same transaction and two unconnected charges of falsification may be tried at one trial under s. 234, but a charge of criminal breach of trust cannot be legally tried together with one of falsification relating to a distinct act of misappropriation committed in a separate transaction. *Kasi Viswanathan* v. *Emperor, I. L. R 30 Mad. 328*, and *Subrahmania Ayyar* v. *King-Emperor, I L. R 25 Mad. 61; L. R 28 I. A. 257.* followed EMPEROR *v.* JIBAN KRISTO BAGCHI (1912) . **I. L. R. 40 Calc. 318**

**3.** ——— *One head of charge relating to several distinct offences—Misjoinder—Illegality of trial—Criminal Procedure Code (Act V of 1898), s 233.* A single charge relating to several distinct offences is illegal. Under s. 233 of the Criminal Procedure Code there should be a separate head of charge for each such offence. A charge,

**CHARGE—*concld.***

under s. 409 of the Penal Code, of criminal breach of trust in respect of a total sum of 10 annas 6 pies, to wit, a sum of 4 annas 6 pies collected from A between certain dates in one year and a sum of 6 annas collected from B between other dates in the same year, is bad for misjoinder; and a trial held on such a charge is illegal. *Subrahmania Ayyar* v. *King-Emperor, I. L. R. 25 Mad. 61,* followed. ASGAR ALI BISWAS *v.* EMPEROR (1913). **I. L. R. 40 Calc. 846**

**4.** ——— *Government Revenue, due on land—Common Burden—Payment by one sharer—Right to claim charge on other shares—No right to a personal decree.* When several shares in the same land or when several lands are liable under a common burden (such as, Government revenue, as in the present case), the discharge of the whole burden by the owner of a distinct share or a distinct land would give him a charge on the remaining shares or lands for the proportionate sums they were equitably liable. But the common burden being only on the land or lands and not recoverable from the sharers personally, there can only be a charge and no personal decree. *Raja of Vizianagram* v. *Raja Setrucherla Somasekhararaz, I. L. R. 26 Mad. 686,* followed. *Alayakammal* v. *Subbaraya Gounden, I. L. R. 28 Mad. 493,* and *Parbhu Narain Singh* v. *Babu Beni Singh, 14 C. W. N. 361,* referred to. *Subramania Chetty* v. *Mahalinghasami Swan, I. L. R. 33 Mad. 41.* distinguished. AMMAN PARIYAYI *v.* PAKRAN HAJI (1913) . . . **I. L. R. 36 Mad 493**

**CHARGE TO JURY.**

*See* JURY, TRIAL BY.
**I. L. R. 40 Calc. 367**

**CHARGES OF MISCONDUCT.**

——— **by Counsel—**

*See* INSTRUCTIONS TO COUNSEL.
**I. L. R. 40 Calc. 898**

**CHARITABLE BEQUEST.**

*See* WILL . **I. L. R. 40 Calc. 192**

**CHARITY.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908). S 92 . **I L. R. 37 Bom. 95**

**CHOTA NAGPUR ENCUMBERED ESTATES ACT (BENG. VI OF 1876).**

——— **s. 2** —*Act if applies to land outside Chota Nagpur—Vesting order—Statute, interpretation of—Statute conferring special privilege in derogation of rights of others, strict construction.* The Chota Nagpur Encumbered Estates Act has no application to land outside Chotanagpur and a vesting order under Chap. II of the Act can only be made in respect of land lying within that area. The privilege enjoyed by a mortgagee from the proprietor in respect of land outside Chota Nagpur to enforce his rights in a Court of ordinary civil jurisdiction, has not been abrogated or struck at

**CHOTA NAGPUR ENCUMBERED ESTATES ACT (BENG. VI OF 1876)—*concld.***

——— **s. 2—*concld.***

by any of the provisions of the statute. *Ajodhya Nath Chowdhury* v. *Keshub Chunder Mukherjee, 11 C. W. N. 1127,* followed and explained. BHICHA RAM SAHI *v.* BISHAMBHAR NATH SAHI (1912). **17 C. W. N. 754**

**CHOTA NAGPUR LANDLORD AND TENANT PROCEDURE ACT (BENG. I OF 1879).**

——— **s. 123.**

*See* EXECUTION OF DECREE.
**I. L. R. 40 Calc. 623**

**CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908).**

——— **ss. 3 (*xi*), 81 (*n*), 91**—*Forest-produce, if includes unworked coal—Suit to eject jaigirdar for breach of covenant—Minerals, right to—Status of tenant, question arising incidentally—Procedure, proper, when suit instituted to which s. 91 applies—Stay of suit—Receiver and injunction—Reliefs, if available under s 91—Presumption against taking away Court's jurisdiction.* Whether any right referred to in cl. (*n*) of s. 81 of the Chotanagpur Tenancy Act is in issue or not in a suit or application instituted by the plaintiff so as to make the provisions of cl (*a*) to s. 91, sub-s. (*1*) of the Act applicable, cannot be determined before written statement has been filed by the defendant. Cl. (*n*) of s. 81 does not include coal in a mine not yet opened. Forest-produce defined in sub-cl (*e*) of cl. (*xi*) of s. 3 of the Act obviously refers to minerals lying on the surface of the soil which may be taken by any person, tenant or not. Cl. (*b*) of s. 91 sub-s. (*1*). does not apply to a suit where the question of the tenant's status arises only indirectly for consideration. A suit by the zemindar for recovery of possession of land from a jaigirdar, in which a point arises as to which of the parties is entitled to the underground rights, is not a suit for the determination of a tenant's status within cl. (*b*) of s. 91, sub-s. (*1*). Where s. 91 applies. the Court should not dismiss the suit but should adjourn the trial till the final publication of the record-of-rights. Under the proviso to sub-s. (*1*) of s 91 of the Act, the plaintiff cannot demand a prohibition of waste or damage but merely the prohibition of the continuance of waste or damage already committed, nor can relief be granted under it by the appointment of a receiver or the issue of a temporary injunction. Every presumption shall be made in favour of the jurisdiction of a Civil Court and it shall not be taken away except by express words or by necessary implication. RAM NARAIN SINGH *v.* LACHMI NARAIN DEO (1912) . **17 C. W. N. 408**

——— **ss. 4 (*3*), 41**

*See* EJECTMENT . **I. L. R. 40 Calc. 858**

**CHOTA NAGPUR TENANCY ACT (BENG. VI OF 1908)**—*concld*

——— s 26—*Agreement to pay enhanced rent made when Act X of 1859 in force—Occupancy raiyat if may object to agreement on extension of Beng Act VI of 1908—Beng Act I of 1879, s. 21, if affects question* S 17 of Act X of 1859 was no bar to the enhancement of the rent of an occupancy raiyat by agreement. Where Beng Act VI of 1908 was extended to an area (Manbhum) where previously Act X of 1859 and not Beng Act I of 1879 applied *Held*, that s. 26 of Beng Act VI of 1908 did not invalidate an agreement to pay enhanced rent validly made when Act X of 1859 was in force SAJOR MAHTO *v.* S P. COOKE (1912) . **17 C. W. N. 430**

——— s. 27.

*See* HIGH COURT, JURISDICTION OF.
**I. L. R. 40 Calc. 518**

——— s 47.

*See* MORTGAGE **I. L. R 40 Calc 534**

——— ss. 59, 79.—*Mokarari tenure, stipulation in, for ejectment on non-payment of rent, if enforcible* A stipulation in a lease creating a permanent tenure to the effect that the lease shall be cancelled in case of non-payment of rent, is not a void stipulation under the provisions of the Chota Nagpur Tenancy Act The liability to ejectment of the holder of a *mokarari istimrari ijara* is to be determined by the conditions of his lease, neither s. 59 nor s. 79 of the Act applying to permanent tenures. NAYAN SINGH *v* AJIT LAL OHDAR (1913) . . **17 C. W. N. 1068**

——— s. 139 (*3*), cl. (*a*).

*See* JURISDICTION OF CIVIL COURT.
**I. L. R. 40 Calc. 402**

——— s. 208.

*See* EXECUTION OF DECREE
**I. L. R 40 Calc. 623**

**CHURCH.**

——— *Prevailing form of worship for sixty years, primâ facie the original form—Right to manage—Usage alone not the test—Canon law may be invoked—One trustee cannot eject another—Repudiation by one trustee, good ground for his removal—Removal, amendment of plaint for, allowed, to avoid further litigation—Civil Procedure Code (Act XIV of 1882), s. 30—Defendants on record objecting to represent others—Jurisdiction of Court to allow—Limitation Act (IX of 1908), s 10—No limitation against one holding properties as trustee—Whole income used, evidence of dedication of lands—Evidence Act (I of 1872), s. 57—Only proof of notorious facts of public history dispensed with.* When it is found that for a period of more than sixty years before the defendants' (parishioners') secession, the Roman Catholic form of worship prevailed in their parish church the onus is undoubtedly on the defendants to establish by satisfactory evidence that the church was Syro-Chaldean at the inception. As to the right of

**CHURCH**—*concld.*

management of a particular Roman Catholic Church, and its properties, besides usuage, other things, such as the rights of ecclesiastical authorities according to the canon law can be looked to, though in some churches on the West Coast, parishioners have more or less control over the management of the properties. A single trustee is not entitled to recover possession of the properties appertaining to the trust from another trustee by evicting him though he may be entitled to maintain a suit in ejectment against a stranger on behalf of the trust Even if the defendants or some of them were once entitled to be trustees along with the Vicar. *Held*, that they by their secession from the Catholic Church and by their repudiation of the trusts of the institution which in law works a forfeiture of their office, disentitled themselves to hold the office of trustee and that they had in law no answer to a suit for their moval. *Marian Pillai* v *Bishop of Mylapore, I L R 17 Mad. 447*, followed. Even if they offered to return to their allegiance to the Romish Church, it would not be possible to accept their recantation to the extent of holding them to be fit to hold the responsible office of trustee Even if the plaintiff had not asked for the removal of the defendants, an amendment to that effect can be allowed in order to avoid future litigation and in the interests of the trust A plaintiff may be allowed to sue certain defendants under s. 30, Civil Procedure Code (Act XIV of 1882), as representing certain others in spite of the objection or refusal of the defendants on record to represent the others, the consent of the defendants on record not being necessary. *In re Andrews* v. *Salmon (1888), W. N. 102*, followed Where a defendant claims to hold certain properties as a trustee and not as his own, there is no period of limitation within which a suit must be brought to recover them on behalf of the trust Limitation Act (IX of 1908), s. 10. The right to the properties of the trust must go with the right to the office of trustee. *Gnanasambanda Pandara Sannadhi* v. *Velu Pandaram, I L. R. 23 Mad. 271*, and *Gossami Sri Gridhariji* v. *Romanlalji Gossami, I. L. R. 17 Calc. 3*, followed. The fact that the entire income of certain properties has always been utilised for a church is very good evidence that the properties belong to it No deed of endowment is necessary to prove a dedication of certain properties in favour of a trust. Under s. 57 of Evidence Act the Court could dispense with evidence only of what may be regarded as notorious facts of public history, and cannot treat letters though 75 years old without any sort of legal proof, as proof of where certain missionaries were living or when they died *Taylor on Evidence, tenth edition, volume II, paragraph 1785, and Wigmore on Evidence, volume III*, s. 1699, referred to. AMBALAM PAKKIYA UDAYAN *v.* BARTLE (1913) **I. L. R. 36 Mad. 418**

**CIVIL AND CRIMINAL TRIALS.**

*See* STANDARD OF PROOF.
**I. L. R. 40 Calc. 898**

**CIVIL COURT.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 68, O XXI, R 100
**I. L. R. 37 Bom. 488**

**CIVIL AND REVENUE COURTS.**

*See* AGRA TENANCY ACT (II OF 1901), S. 95 . . **I. L. R. 35 All. 14**

——— JURISDICTION OF—

*See* AGRA TENANCY ACT (II OF 1901), S. 199 . **I. L. R. 35 All. 521**

*See* U P. LAND REVENUE ACT (III OF 1901), S. 121 . **I L. R. 35 All. 541**

——— *Jurisdiction—Occupancy holding—Usufructuary mortgage—Ejectment of mortgagee—Suit by mortgagee for declaration that surrender was not binding on him* An occupancy tenant who had made usufructuary mortgage of his holding then proceeded to surrender the holding to the zamindar, who had the mortgagee ejected by the Revenue court *Held*, on suit by the mortgagee for a declaration, that the surrender of his holding by the mortgagor was not binding on him, that no such suit would lie in the face of the ejectment proceedings in the Revenue Court which were binding on the parties. *Ram Devi Kuari* v. *Bindesri Upadhya, 8 All L J 940*, followed SHIVA PRAKASH *v.* KARNA (1913) **I. L. R. 35 All. 464**

**CIVIL COURTS ACT (XII OF 1887).**

——— SS. 21 (*2*), (*4*) AND 22 (*1*).

*See* SANCTION FOR PROSECUTION.
**I. L. R. 40 Calc. 37**

**CIVIL COURTS ACT, BOMBAY (Bom. XIV OF 1869).**

——— S. 32.

*See* COURT OF WARDS ACT (BOM. ACT I OF 1905), S. 3 (c)
**I. L. R. 37 Bom. 313**

**CIVIL PROCEDURE CODE (ACT XIV OF 1882).**

*See* LIMITATION ACT (XV OF 1877), ARTS 178, 179 . **I. L. R. 36 Mad. 553**

——— S. 13.

*See* COMPANIES ACT, 1882, SS 6, 40, 41.
**I L. R. 40 Calc. 1**

*See* ENHANCEMENT OF RENT.
**I. L. R. 40 Calc. 29**

——— S. 30.

*See* CHURCH . **I. L. R. 36 Mad. 418**

——— *Right to a village pathway—Distinction between a public highway and a village road.* There is a distinction between a public highway and a village road, and a suit under s. 30, Civil Procedure Code, 1882, is maintainable when a right to a village pathway is the subject-matter of litigation even in the absence of special damage. *Chuni Lal* v. *Ram Kishen Shahu,*

**CIVIL PROCEDURE CODE (ACT XIV OF 1882)**—*contd*

——— S. 30—*concld.*

*I. L. R. 15 Calc. 460*, referred to. KALI CHARAN NASKAR *v* RAM KUMAR SARDAR (1912)
**17 C. W. N. 73**

——— S. 43.

*See* PARTITION . **I L. R. 36 Mad. 151**

——— S 53—*Plaint if may be returned for amendment after issues framed* The mere fact that issues have been framed does not stand in the way of the return of the plaint by the Court for amendment under s. 53 of the Civil Procedure Code (Act XIV of 1882) *Port Canning and Local Improvement Co* v *Dharanidhar, 9 C W N. 608, Baroda Prosad* v. *Gunja Nath, 2 C. L J. 11*, referred to *Ganga Sahai* v *Mahamad Ali, I L. R. 20 All. 444n*, followed. SASI BHUSAN DAS *v.* RASIK LAL RAY (1912) **17 C. W. N. 989**

——— S 108—*Application under, if bars suit to set aside decree.* Where an application under sec 108 of the Civil Precedure Code of 1882 to set aside an *ex parte* decree is dismissed for default, it does not bar a suit by the applicant to set aside the decree for fraud or other valid reason. BALKESEN LAL *v.* TAPESUR SINGH (1911)
**17 C. W. N. 219**

——— S. 223.

See LIMITATION ACT (IX OF 1908), SCH I, ART. 128 . . **I. L. R. 35 All. 389**

——— S. 231—*O. XXI, r. 15, Civil Procedure Code (Act V of 1908)—Execution application by one only of the decree-holders, maintainability of—Civil Procedure Code (Act V of 1908), O. XXI, r. 2—Uncertified adjustment, not recognizable by Court executing the decree—Judgment-debtor's counter-petition equivalent to application if within time.* Under s 258, Civil Procedure Code (Act XIV of 1882), corresponding to O XXI, r 2 of Civil Procedure Code (Act V of 1908), a payment or adjustment of a decree cannot be recognized by any Court executing the decree unless the same has been certified in the manner allowed by law. The clause is applicable where in answer to an application for execution an adjustment is set up by the judgment-debtor. *Gadadhar Panda* v. *Shyam Churn Naik, 12 C. W. N. 485*, referred to. Though a judgment-holder's counter-petition may be treated as an application to certify, the same cannot be allowed in the absence of any fraud, if it is made beyond 90 days of the adjustment. *Ganapathy Ayyar* v. *Chenga Reddi, I. L. R. 29 Mad. 312, Veerappa Chettiar* v. *Armugam Poosari, 17 Mad. L. J. 527*, and *Periatambi Udayan* v. *Vellayya Gounden, I. L. R. 21 Mad 409*, followed *Ramayyar* v. *Ramayyar, I L R 21 Mad 356*, distinguished and commented on. *Gadadhara Panda* v. *Shyam Churn Naik, 12 C. W. N. 485*, distinguished HEATON, *J's* judgment in *Trimback* v. *Hari Laxman 12 Bom. L. R. 686*, not followed. Under s. 236, Civil Procedure Code (Act XIV of 1882), corresponding to O. XXI, r. 15, Civil Procedure

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 231—*concld.*

Code (Act V of 1908), execution in favour of one only of the several decree-holders cannot be allowed unless there is sufficient cause to do so ; when so allowed it is duty of the Court to pass such orders as it deems necessary for protecting the interests of the persons who have not joined in the application. BUDRUDEEN *v.* GULAM MOIDEEN (1913) . . . . **I. L. R. 36 Mad. 357**

——— s. 238.

*See* LIMITATION ACT (XV OF 1877), SCH II, ART. 179 . **I. L. R. 37 Bom. 317**

——— s 257A—*Mortgage decree silent as to interest—Petition by judgment-debtor for time wherein he agrees to pay interest—Assent by decree-holder—Court's order granting time, if sanctions agreement to pay interest—Judicial order, construction of—Decree if can be altered by agreement of parties.* Where a mortgage decree contained no provision for interest on the decretal amount from the expiry of the period of grace to the date of realisation, and the decree was made absolute, the mortgaged properties being ordered to be sold in execution thereof, whereupon the judgment-debtor presented a petition, assented to by the decree-holder, asking for time and agreeing to pay interest on the decretal amount at the bond rate till the date of realisation, and the Court passed an order on the petition granting time : *Held*, that the order of the Court granting time must be taken as passed under s. 257A of the Civil Procedure Code of 1882. Judicial orders must be reasonably construed and judicial acts must be presumed to have been regularly performed. *Held*, therefore, that the sanction of the Court covered not merely the prayer for adjournment but also the agreement to pay interest, although this matter was not specifically referred to in the order. *Saroda Prosad* v. *Luchmiput, 10 B. L. R 214, Bourne v. Gatliff, 11 Cl. & F. 45, 80,* and *Banwari Das* v. *Mahammad Mashrat, I. L. R. 9 All. 702,* referred to. A decree must ordinarily be executed as originally made and the parties cannot be permitted to make a substantial alteration therein. But where the parties have acted upon the decree as altered for a number of years and treated it as valid, the judgment-debtor, who has substantially benefited thereby, cannot be permitted to take exception to its validity. Parties litigants cannot be allowed to assume inconsistent positions in Court to the detriment of their opponents ; where they have elected to adopt a certain course of action, they will be confined to the course they have deliberately adopted. *Dino Nath Sen* v. *Guru Charan Pal, 14 B. L. R. 287, 21 W. R. 310, Ram Ranjan* v. *Jawhuru Juma, 23 W. R. 129, Bhoopendra Nath* v. *Kalee Prasanna, 24 W. R. 205, Heera Lal* v. *Dhunputh Singh, 24 W. R. 232,* referred to. GOKHAI PADHAN *v.* BEHARI LAL PANDIT (1912).
**17 C. W. N. 565**

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— s. 258.

*See* EXECUTION OF DECREE.
**I. L. R. 35 All. 178**

——— ss. 276, 295.—*Attachment—Private assignment—Claims enforceable under an attachment—Claim for rateable distribution of assets—Position of creditors attaching property after a prior attachment and a private assignment subsequent to such prior attachment—Validity of private alienations of property under attachment as against subsequent attachments by other creditors in the event of the withdrawal of the prior attachment—Nesssity for the existence of assets realised by sale or otherwise in execution of a decree to give a right to claim rateable division under s. 295.* In 1894, *A* brought a suit against *B*, obtained a decree and in execution of the decree attached the right, title and interest of *B* in certain properties. After the attachment, in 1896, *B* assigned the whole of his right, title and interest to the 1st defendant. In 1898, the plaintiffs sued *B* and obtained a decree. In 1900, *B* took the benefit of the Insolvency Act, and his insolvency, with a small break not material in this suit, lasted up to the date of the present suit. In 1904, the plaintiffs levied an attachment on the right, title and interest of *B* in the property already subject to the attachment by *A*. In 1907, *A* was paid off and the attachment by him was accordingly withdrawn and thereafter, in 1910, on the application of the 1st defendant to the Judge in Chambers, the attachment by the plaintiffs was raised by an order dated the 15th of April 1910. On the plaintiffs suing for a declaration that the interest of *B* in the said property at the date of the several attachments was liable to be attached and sold in execution of the plaintiffs' decree, that the order of the 15th of April 1910 should be set aside, that the said interest of *B* should be sold in execution of the plaintiffs' decree and the proceeds thereof applied according to law . *Held*, that the essential condition of enforcement of claims under s. 295 of the Civil Procedure Code of 1882, was that there should be assets realised by sale or otherwise in execution of a decree, but that in the present case there were no such assets realised by sale or otherwise in execution of a decree which could have been divided rateably among the creditors who had applied for execution of their decrees. *Held*, further, that the plaintiffs were not the possessors of a claim enforceable under s. 295 or as a consequence enforceable under the attachment by *A*, within the meaning of s. 276, and therefore, that the assignment to the 1st defendant was not void against the plaintiffs. JETHA BHIMA *&* Co. *v.* LADY JANBAI (1912).
**I. L. R. 37 Bom. 138**

——— s. 278.

*See* VOLUNTARY PAYMENT.
**I. L. R. 40 Calc. 598**

——— s. 287 (*c*)—*Execution of decree—Mortgage on property sold notified at time of sale—Subsequent suit on mortgage—Auction purchaser not*

CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd.*

——— s. 287—*concld*

*estopped from questioning validity of mortgage.* In proceedings in execution of a decree, a person alleging himself to be the mortgagee of property about to be sold asked the executing Court to notify the existence of his prior incumbrance on the property to be sold, and the Court, without apparently making any inquiry as to the genuineness of the mortgage, did so, but did not sell the property subject to the prior incumbrance. The property was sold and purchased by the decree-holder. *Held*, on suit by the mortgagee, that the decree-holder, auction purchaser, was not estopped from contesting the validity of the mortgage so notified. *Shib Kunwar Singh* v. *Sheo Prasad Singh, I. L. R. 28 All. 418*, followed. JAIRAJ MAL *v.* RADHA KISHAN (1913).

**I. L. R. 35 All. 257**

——— **ss. 287, 311, 312, 588, 594 to 596.**

*See* APPEAL TO PRIVY COUNCIL.

**I. L. R 40 Calc. 635**

——— **s. 310A.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89.

**I. L. R. 37 Bom. 387**

——— **s 315**—*Execution of decree—Sale in execution—Auction purchaser deprived of property purchased owing to failure of judgment-debtor's title—Suit to recover purchase money—Limitation—Limitation Act (IX of 1908), Sch. I, Arts. 62 and 120. Held*, (i) that an auction purchaser seeking to recover the purchase-money paid by him upon the ground that he has been deprived of the property purchased owing to failure of the judgment-debtor's title thereto has no right outside the Code of Civil Procedure; and (ii) that the remedy given by the Code of Civil Procedure is not a suit for money had and received, to which Art. 62 of the first Schedule of the Indian Limitation Act, 1908, would apply, but is a suit falling within the purview of Art 120. *Munna Singh* v. *Gajadhar Singh, I. L. R. 5 All. 577*, and *Mohiudeen Ibrahim* v. *Mahomed Mura Lewai, 23 Mad. L. J. 487*, followed. *Ram Kumar Shaha* v. *Ram Gour Shaha, 13 C. W. N. 1080*, not followed. *Hanuman Kamal* v. *Hanuman Mandur, 1 L. R. 19 Calc. 123*, distinguished. SIDHESWAR PRASAD NARAIN SINGH *v.* GOSHAIN MAYANAND (1913) . . **I. L. R. 35 All. 419**

——— **s. 317**

*See* ESTOPPEL . **I. L. R. 36 Mad. 564**

——— **ss. 443, 456, and 462.**

*See* MINOR . . **I. L. R. 35 All. 487**

——— **s. 462**—*Compromise of decree made in partition suit by guardian ad litem without leave of Court—Suit by minor on attaining his majority to set it aside—Father of Hindu joint family made guardian ad litem of his son, being also himself a defendant in partition suit—Powers of head of Hindu joint family—Decree in partition suit in favour of father—Form of decree in setting aside compromise.* S. 462 of Civil Procedure Code (Act XIV of 1882) provides that "no next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian" Where in a suit for partition by a member of a joint family, the father was made third defendant, and his son, a minor, was made sixth defendant, and the Court appointed the father guardian *ad litem* of the minor: *Held* (reversing the decisions of the Courts in India), that the powers of the father were controlled by the provisions of s. 462 of the Code, and he could not without leave of the Court, do any act in his capacity of father, or managing member of the joint family which he was debarred from doing as guardian *ad litem*. To hold otherwise would be to defeat the object of the enactment. A compromise made, without the leave of the Court, by the father with the second defendant, of a decree passed against the latter, was held therefore, in a suit brought by the minor on attaining his majority, to be not binding on him. The fact that the money was by the decree made payable, not to the minor, but to the father who was admittedly representing the family, made no difference in the duty which lay on him to obtain the leave of the Court to an agreement which was clearly intended to affect the rights and interests of the minor. The decree made by their Lordships was to the effect that the compromise was not binding on the minor, and he was remitted to his original rights under the decree in the partition suit. *Manohar Lal* v. *Jadunath Singh, I. L. R. 28 All. 585, 589; L. R. 33 I. A. 198, 131*, followed. GANESHA ROW *v.* TULJARAM ROW (1913).

**I. L. R. 36 Mad. 295**

——— **s. 539**—*Decree, effect of, for scheme under, bar to private rights—Specific Relief Act (I of 1877), s. 42—Consequential relief—Suit for recovery of office of trustee and injunction substantially valued—Actual possession with tenants who were willing to pay to whomsoever was a trustee—Prayer for possession unnecessary.* Where the lands of a temple were in the actual possession of tenants who were willing to pay rent to whomsoever was the trustee, a suit which merely prays for the recovery of the office of trustee and for an injunction against the defendants who were in possession of the office, which injunction was valued at a substantial figure, *viz.*, Rs. 2,600, does not offend against the proviso to s. 42 of the Specific Relief Act (I of 1877) as the plaintiff had asked for such possession as he could under the circumstances and as the possession of the tenants would not be diverse to the plaintiff after his recovery of office. *Kunj Bihari* v. *Keshavlal Hiralal, I. L. R. 28 Bom. 567*, followed. *Rathnasabapath Pillai* v. *Ramasami Ayyar, I. L. R. 33 Mad. 452, Abdulkadar* v. *Mahomed, I. L. R. 15 Mad. 15,*

## CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*contd*

——— s 539—*concld.*

*Narayanan* v. *Shankunni, I L R 15 Mad 255,* and *Jagannatha Chary* v *Rama Rayar, I L R. 28 Mad 238,* distinguished *Subramanyan* v. *Paramaswaran, I L R 11 Mad 116,* and *Jagadindra Nath Roy* v. *Hemanta Kumari Debi, I. L R 32 Calc 129,* referred to Where an office of trustee was held by the members of a certain family for nearly a hundred years and by nobody else, the office must be held to be hereditary in that family S. 539, Civil Procedure Code (Act XIV of 1882), corresponding to s. 92, Civil Procedure Code (Act V of 1908), is not applicable to a suit to enforce a private right such as an hereditary trusteeship of a certain family, and it is no bar to such a suit *Budree Das Mukim* v *Choonı Lal Johurry, I. L R 33 Calc 789,* referred to. A scheme once settled by a Court cannot be altered except by the Court and then only on substantial grounds. *Attorney-General* v. *Worcester (Bishop), 9 Hare 328, In re Betton's Charity, 77 L. J Ch 193, Re Broun's Hospital* v. *Stamford, 60 L. T. 288.* and *Re Sekeford's Charity, 5 L. T. 488,* followed. A scheme framed under s. 539, Civil Procedure Code, is binding on all (whether worshippers or not) including even one who might have claimed a hereditary trusteeship and have brought a suit to enforce such a right before the settlement of the scheme; and a decree framing a scheme is a bar to a suit by such a person, even though the denial of such a right of suit might act very prejudicially to his interests and even though his application to be made a party to the scheme suit might have been rejected S. 539 confers upon the Courts in this country the same powers that the Courts in England possessed at the time of its enactment, and the principles of English law are applicable. *Prayag Doss Ji Varu, Mahant* v *Tirumala Srirangachar lavaru, I. L. R 28 Mad 319, 324, Chintaman Bajaji Dev* v. *Dhondo Ganesh Dev, I. L R 15 Bom 612, Annaji* v. *Narayan, I L R 21 Bom 556,* and *Prayag Doss Ji Varu* v. *Tirumala Srirangacharla Varu, I. L R. 30 Mad. 138,* referred to. RAMADOS *v.* HANUMANTHA RAO (1913)

**I. L. R. 36 Mad. 364**

——— ss 562, 564

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O XLI, R. 33.

**I. L. R. 37 Bom. 289**

——— s. 568—*Appeal, admission of fresh evidence on—Court's power* An appeal Court ought not to admit fresh evidence which, it is not suggested, was not available during the pendency of the trial in the Court of first instance. *Kessowji Issur* v *Great Indian Peninsula Railway Company, I. L. R 31 Bom. 381,* and *Krishnama Chariar* v *Narasimha Chariar, I L. R. 31 Mad. 114,* relied on. MIDNAPUR ZEMINDARY COMPANY, LD. *v.* MUKTAKESHI DASI (1912).

**17 C. W N 615**
**I. L. R. 40 Calc 402**

## CIVIL PROCEDURE CODE (ACT XIV OF 1882)—*concld.*

——— s. 568—*concld*

2. ——— "*Or for any other substantial cause", effect of—Power of an appellate Court to admit additional evidence —"Other" not ejusdem generis—"To enable it to pronounce judgment," meaning of—Appellate Court, all powers of original Court vest in* An Appellate Court has power to admit further evidence under the clause "or for any other substantial cause" in s. 568, Civil Procedure Code, which cause need not be *ejusdem generis* with the causes stated in the previous part of the section *Kessowji Issur* v. *G I. P Railway Company, I L R 31 Bom 381,* explained and distinguished *Per* SADASIVA AYYAR. *J*—The expression "to enable it (the Appellate Court) to pronounce judgment" means to enable it to pronounce a *satisfactory* judgment; an Appellate Court has all the powers of an original Court. ANDIAPPA PILLAI *v.* MUTHUKUMARA THEVAN (1913) . . . **I. L. R. 36 Mad. 477**

——— s. 578—*Suit tried on merits in spite of defective verification—Defect, if material* Where a plaint was verified by three out of six plaintiffs, who were adults, and by one of them on behalf of the next friend of the three remaining plaintiffs who were minors but without the next friend's authority, and the Court held that the plaint was not properly verified but nevertheless proceeded to try the case on the merits and dismissed it: *Held,* that the defect in the verification was cured by the provisions of s 578 of the Code of Civil Procedure *Basdeo* v. *John Smidt, I L. R 22 All 55, Shama Soondaree* v. *Rohimuddin, 24 W R. 71,* referred to SASI BHUSAN DAS *v* RASIK LAL RAY (1912) . . . **17 C W. N. 989**

——— Ch. XX—*Insolvency—Insolvent discharged without a schedule of debts being framed—Attempt on the part of a creditor to proceed against after-acquired property.* Where an insolvent had taken advantage of the provisions of Ch XX of Code of Civil Procedure, 1882, and had been discharged under s 351, but no schedule of debts had been framed, it was *held* that a judgment-creditor of the insolvent could not thereafter have recourse against property which had come into the hands of the insolvent subsequently to his discharge AMIN-UD-DIN HAIDAR *v* SHEORAJ SINGH (1913) . . . **I. L. R. 35 All. 402**

## CIVIL PROCEDURE CODE (ACT V OF 1908).

——— ss 1 (2), 48, 154.

*See* EXECUTION OF DECREE

**I. L. R. 40 Calc. 704**

——— s. 2.

*See* SUCCESSION ACT (X OF 1865), S. 244 . . **I. L R 35 All. 448**

——— *Rejection of appeal as time barred before admission, if decree* An order by an Appellate Court rejecting an appeal before it

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd.*

——— **s. 2**—*concld.*

has been admitted, on the ground that it was presented out of time, is a decree within the meaning of the definition in s. 2, Civil Procedure Code, and a second appeal lies from the order RAKHAL CHANDRA GHOSH *v* ASUTOSH GHOSH (1913) **17 C. W. N. 807**

——— **ss. 2, 104, 148**—*Pre-emption—Decree in pre-emption suit fixing time for payment—Order extending time—Appeal—"Decree"—"Order."* *Held*, that s. 148 of the Code of Civil Procedure, 1908, does not entitle the Court to extend the time fixed by the decree for payment of the purchase money in pre-emption cases *Held*, also, that an order made under s 148 of the Code of Civil Procedure, 1908, is not a decree within the meaning of s. 2 of the Code, nor is it appealable as an order under s. 104. *Rahima* v. *Nepal*, *I. L. R. 14 All 420*, distinguished. SURANJAN SINGH *v.* RAM BAHAL LAL (1913) **I. L. R. 35 All. 582**

——— **ss. 3, 115**—*Mamlatdars' Courts Act (Bom. Act II of 1906)—Mamlatdar's decree—Reversal by the Collector on evidence—Collector's judicial functions—Superintendence and control by the High Court—Courts subordinate to the High Court.* The Mamlatdars' Courts Act (Bom Act II of 1906) expressly constitutes the Collector (taking proceedings under that Act) a Court and when he exercises judicial functions, he is subject to the superintendence and control of the High Court under s. 115 of the Civil Procedure Code (Act V of 1908). The Collector has no authority to reverse the decision come to by the Mamlatdar upon the evidence. S. 3 of the Civil Procedure Code (Act V of 1908), in which certain Courts are stated to be subordinate to the High Court, does not exclude all other Courts from the category of Courts subordinate to the High Court. *The Collector of Thana* v. *Bhaskar Mahadev Sheth*, *I. L. R. 8 Bom 264*, referred to. PURSHOTTAM JANARDAN *v.* MAHADU PANDU (1912) **I. L. R. 37 Bom. 114**

——— **s. 7** (*1*) (*b*), **ss. 69, 70, Sch. III**—*Decree—Interest awarded up to realisation—Execution—Interest calculated in darkhast up to its date—Collector carrying on execution and paying interest and amount as prayed in darkhast—Court directing Collector to continue execution till payment of interest up to realization—Discretion of Collector—Jurisdiction of Court.* The plaintiffs obtained a money-decree against the defendants which awarded interest on the decretal amount up to its realisation. They applied to execute the decree and calculated interest over the decretal amount up to the date of the application. The Collector, to whom the execution-proceedings were transferred, placed the defendant's estate under his management, and when the decretal amount and interest as calculated in the plaintiffs' application were paid up, he treated the decree as satisfied and returned the execution-proceedings to the Court.

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd.*

——— **s. 7**—*concld.*

The Court sent back the proceedings to the Collector, asking him to continue in management till interest over the decretal amount from the date of the application to the date of realization was paid to the plaintiffs. The District Court held on appeal that the Court had no jurisdiction to interfere with what lay completely within the Collector's jurisdiction and reversed the order. On second appeal.—*Held*, restoring the order passed by the first Court, that under the provisions of s. 7 (*1*) (*b*) of the third schedule of the Civil Procedure Code of 1908, the Collector had to take into account the whole amount, with the total interest awarded by the decree; and that that would include not merely interest up to the date of the application but also interest which would run according to the decree thereafter. *Per* CHANDAVARKAR, *J.*—The Civil Procedure Code (ss 69 and 70) of 1908 gives authority to the Collector for the purpose of enabling him to determine the best mode or modes of satisfying the decree, whether it is to be satisfied by management by the Collector himself of the land attached in execution of the decree, or whether it is to be by its sale or letting. So far, therefore, as the machinery necessary for the satisfaction of the decree is concerned the Collector is the sole authority The discretion is his, and no Civil Court can interfere with that discretion. But that discretion does not extend to any jurisdiction in the Collector to determine whether the decree itself has been satisfied or not. The latter jurisdiction is the Civil Court's. It is that Court alone which is competent to determine the question judicially. BHURCHAND HANSRAJ *v.* VIRA CHAMPA (1912) **I. L. R. 37 Bom. 32**

——— **S. 9, Sch. II, s. 20**—*Dispute as to mánpán—Suit of civil nature—Award by arbitrators settling dispute out of Court—Application to file award—Award can be filed though referring to mánpán—Agreement to distribute cash allowance—Pensions Act (XXIII of 1871)* S. 20 of the second Schedule to the Civil Procedure Code (Act V of 1908) is devised for the purpose of enabling, where the subject-matter of the award lies within more than one jurisdiction, any Court within whose jurisdiction a part of the subject-matter lies to direct that the award be filed. It does not contemplate that the Court has no jurisdiction to order an award to be filed, only because it deals with *mánpán*, that is, matters relating to a complement or dignity about which the Courts would have no jurisdiction to entertain suits. It is the policy of law to enable parties who by private arrangement settle a dispute to have that settlement made legally effective. If there is something to arbitrate on, and there is a reference and an award, the policy of the law is that that award should be given effect to without minute inquiry by the Court. Disputes about *mánpán* which cannot be settled in the Courts can often only be effectively settled by arbitration. The parties are at liberty

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 9—*concld*

without in any way going against the words or the spirit of the Pensions Act (XXIII of 1871) to agree amongst themselves that when the cash allowance is received from Government it shall be distributed among them in a certain way. RAGHAWENDRA AYYAJI *v* GURURAO RAGHAWENDRA (1913) . . . **I. L R 37 Bom. 442**

——— s. 11—

1. ——— Res judicata—*First suit by widow alleging that the property was her husband's separate property—Suit, decision of—Appeal by widow—Withdrawal of appeal—The widow's daughter contending in a subsequent suit that the property was her father's self-acquisition—Plea barred by res judicata* In a suit brought against her husband's nephew, a Hindu widow alleged that certain property was her husband's separate property. The Court held that the property was joint property, but allowed the widow to be in possession of it in lieu of her rights to maintenance. The widow appealed against the decree, but she subsequently withdrew the appeal On the widow's death, the property passed into the possession of her daughter who claimed it as heir to her father The nephew filed the present suit to recover possession of the property from the daughter, who resisted the claim on the ground that the property having been the separate property of her father had descended to her and that the decision in the first suit was not binding on her. *Held*, that the first decree operated as *res judicata* against the defendant inasmuch as it was a decree against the widow as representing her husband's estate *Held*, further, that so far as the first suit was concerned the case was fairly contested and the mere withdrawal of the appeal by the widow was not sufficient to deprive the decree of its operative character in law. *Katama Natchier* v *The Rajah of Shivagunga, 9 Moo I. A 539*, followed. GHELABHAI *v.* BAI JAVER (1912) **I. L. R. 37 Bom. 172**

2 ——— *Res judicata—First suit for partition—Declaratory decree—Second suit by other members for partition of their share—Res judicata does not bar the second suit* A Khoti village was owned by two families known as Varang and Desai. In 1854, two members of the Desai family brought a suit for partitioning the one-half share of the Desai family in the village. That suit ended in a decree which awarded them the share. The decree remained unexecuted In 1904, the plaintiff, a member of the Varang family, sued the Varang as well as the Desai members to obtain his $\frac{1}{8}\frac{1}{4}$th share by partition of the village Some of the defendants in both families admitted the plaintiffs' claim and asked that their shares also should be awarded to them on partition. It was contended that the claim of the Desai defendants to obtain their share in the village was barred as

CIVIL PROCEDURE CODE (ACT V OF 1808)—*contd*

——— s. 11—*contd.*

*res judicata* in virtue of the decree of 1854, which awarded to them half a share in the village:—*Held*, that the first decree was a declaratory decree and did not operate as *res judicata* in the present suit *Babaji Parshram* v. *Kashibai, I. L. R. 4 Bom 157* and *Nasrat-ullah* v. *Munbullah, I L R. 13 All 309*, followed. *Soni Maganlal* v. *Munshi Himatbhai, 3 Bom. L R. 94*, distinguished. JAGU BABAJI *v* BALU LAXMAN (1912) **I. L R 37 Bom. 307**

3. ——— *Letters Patent, cl. 12—Evidence Act (I of 1872), s 44—Suit for restitution of conjugal rights—Previous suit for similar relief—Competency of the Court to try the previous suit—Dismissal of the suit for want of jurisdiction after raising and deciding issues on the merits—No bar of res judicata.* The plaintiff filed a suit for restitution of conjugal rights against the defendant and for an injunction restraining her from marrying any other person pending the disposal of the suit. The defendant raised the plea of *res judicata* urging that the plaintiff had filed a previous suit against her in the High Court for similar relief and had failed in it The previous suit was filed without obtaining the leave of the Court under cl. 12 of the Letters Patent, the residence of the parties being outside the jurisdiction of the Court. The Court, therefore, dismissed the suit for want of jurisdiction though issues on the merits were raised and decided. The first Court disallowed the plea of *res judicata* on the ground that the judgment in the previous suit was delivered by the Court not competent to do so in consequence of the absence of leave. On appeal by the defendant, the Judge dismissed the suit holding that the absence of leave did not go to the root of the jurisdiction of the Court and therefore the judgment of the Court was the judgment of a Court having jurisdiction. *Held*, on second appeal by the plaintiff, that the judgment in the previous suit was delivered by a Court not competent to deliver it within the meaning of s. 44 of the Evidence Act (I of 1872), and therefore the plea of *res judicata* could not prevail. ABDUL KADIR *v.* DOOLANBIBI (1913) **I. L. R. 37 Bom. 563**

4. ——— *Res judicata—Prior and subsequent mortgagees—Suit by first mortgagee impleading second but no decree as to rights of first mortgagee—Suit for sale by prior mortgagee not barred.* A second mortgagee brought a suit for sale on his mortgage, in which he impleaded the first mortgagee and asked to redeem. The first mortgagee did not appear. The plaintiff got a decree for sale but the decree did not either give him redemption of the first mortgage or direct the property to be sold subject to the first mortgage. *Held*, that the first mortgagee was not precluded from subsequently bringing a suit for sale on his mortgage. *Srinivasa Rao Saheb* v. *Yamuna bhai Ammall, I L. R. 29 Mad. 84, Katchala,*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 11—*concld.*

*Mudali* v. *Kuppanna Mudali, Mad. W N 1912, 41,* followed. *Sri Gopal* v *Pirthi Singh, I L R. 24 All 429, Natu Krishnama Chariar* v. *Annangara Chariar, I L. R. 30 Mad 353,* and *Gopal Lal* v *Benarasi Pershad Chowdhry, I L. R 31 Calc. 428,* distinguished AJUDHIA PANDE *v* INAYAT-ULLAH (1912) . **I. L. R. 35 All 111**

5. ——— *Res judicata—Two suits, one judgment and two decrees—Two appeals, one of which abates before the other is heard* A plaintiff instituted, on the same day and in the same Court, two suits, in each of which the claim was for a declaration that he was the *mahant* of a certain *math* The one was against defendant *A* only, the other against defendants *A* and *S*. Both suits were decided by a single judgment, but a separate decree was framed in each. In the former suit *A* appealed. In the latter *S* appealed but *A* did not Pending *A*'s appeal *S* died and his appeal abated and judgment in the case became final *Held*, that the hearing of *A*'s appeal was barred. *Zahania* v *Debia, I L R. 33 All 51,* followed. ANANT DAS *v* UDAI BHAN PARGAS (1913) . . . **I. L. R. 35 All 187**

6. ——— *Res judicata—Previous rent suit—Question of area of holding and amount of rent decided in previous suit if res judicata in subsequent suit* In a previous suit for rent, the plaintiffs alleged that the defendants besides holding certain plots of land originally forming their own holding also held certain other plots belonging to another tenant *S* who had abandoned his holding, at a consolidated *jama* of Rs 30. Defendants denied holding the latter plots and contended that their *jama* was only Rs. 16 per year. It was held that the defendants were liable to pay rent at the rate of Rs 16 per annum for a holding which included the lands alleged to have formerly belonged to *S*. *Held*, that the questions, whether the lands alleged to have been formerly held by *S* formed part of the defendant's holding and of the amount of rent payable were directly and substantially in issue in that suit and were *res judicata* in a subsequent suit by the plaintiffs against the defendants for establishment of their title to the plots alleged to have formerly belonged to *S* and for rent in the alternative The authorities reviewed MANE MAHAMMAD NASYA *v* DHANI MAHAMMAD (1912) . . **17 C. W. N. 76**

——— s. 13.

*See* RIGHT OF SUIT
**I. L. R. 36 Mad. 141**

——— s. 47, O. XXI, rr. 22, 90.

*See* EXECUTION OF DECREE.
**I. L. R. 40 Calc. 45**

——— s 47.

1. ——— *Execution of decree—Partition—Objection that decree-holders had realised certain debts assigned by the decree to the judgment-debtors—Procedure.* The decree in a partition suit allotted *inter alia*, a sum of money to be paid by the judgment-debtor to the decree-holders and assigned certain debts on account-books to the judgment-debtor. On application by the decree-holders for execution as to the sum allotted to them, the judgment-debtor took objection that the decree-holders had as a matter of fact realized a large amount out of the debts which had been assigned by the decree to him *Held*, that the question thus raised was not a matter falling within the purview of s. 47 of the Code of Civil Procedure, and that the judgment-debtor's remedy was by a separate suit to recover from the decree-holders the amount alleged to have been illegally realized MOHAN LAL *v* JAGAN NATH (1913) . . . **I. L. R. 35 All. 243**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 47—*contd.*

2 ——— *Execution, application for—Court's order when amounts to adjudication—Subsequent dismissal of application for default—Fresh application by decree-holder—Judgment-debtor if can raise question of limitation.* Where, on the application of the decree-holder for execution, the Court issued notice on the judgment-debtor which was duly served and on the latter's prayer for time to put in objections an adjournment was granted, but the judgment-debtor failed to appear on the 4th January 1908, the date fixed for hearing, and an order was passed by the Court to the following effect: "Decree-holder is to take further steps on or before the 7th January 1908," but on the 7th January the application was dismissed for default. *Held*, that the order passed on the 4th January necessarily implies an adjudication that the decree at the time was capable of execution and it is no longer open to the judgment-debtor to re-open the matter on a subsequent application by the decree-holder for execution and urge that the previous application was made beyond the time allowed by law, and consequently the application for execution was barred by limitation. *Mungal Proshad Dichit* v *Girija Kanta Lahiri, I. L. R. 8 Calc. 51, Sheikh Budan* v. *Ram Chandra, I. L R 11 Bom 537,* followed. *Held*, further, that it is not essential in such a case that there should be an order for attachment, the principle laid down above being applicable whenever there is an adjudication by the Court upon the rights of the parties to the execution proceedings. *Moazzam Hossain* v *Sarat Cooman Debi, 11 C L. J. 357,* relied on; *Tileswar Rai* v. *Parbati, I. L R 15 All. 198,* dissented from. *Sheoraj Singh* v. *Kameswar Nath, I L. R. 24 All. 283,* referred to If an order has been made which directly or by implication determines the rights of the parties to an execution proceeding, the fact that the decree-holder does not choose to proceed with execution and the case is struck off does not entitle either party to re-open the question upon which there has been a previous adjudication. *Kamini Debi* v. *Aghore Nath, 11*

**CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.***

**——— s. 47—*concld.***

*C L. J 91*, followed. *Bhagwan* v *Dhondi, I. L. R 22 Bom. 83, Monmohan Karmokar* v. *Dwarka Nath Karmokar, 12 C. L J 312, Khosal Chandra Roy* v. *Ukiladdi, 14 C. W. N 114, Mochai Mandal* v. *Meseruddin Molla, 13 C. L. J 26*, distinguished. MURLIDHAR SUKUL *v.* NURSINGH DAS (1911) **17 C. W. N. 113**

3. ——— *Order by High Court for removal of attachment pending appeal on furnishing security—Order by lower Court accepting such security if appealable* On the application of the judgment-debtor, the High Court ordered that a certain attachment should be removed pending the hearing of a certain appeal on the petitioner furnishing security to the satisfaction of the Court below for execution of the decree. The case went back to the lower Court which accepted the security that was tendered. Against this order an appeal was preferred to the High Court. *Held*, that the order appealed against determined no rights of the parties that were in controversy and no appeal lay under the Code of Civil Procedure (Act V of 1908). Every order passed in relation to execution need not necessarily be deemed to come within the scope of the definition in s. 2 (*2*), Civil Procedure Code. SARASWATI BARMANIA *v.* MOTI BARMANYA (1913) **17 C. W. N. 1240**

**——— s. 60.**

1. ——— *Dekkhan Agriculturists' Relief Act (XVII of 1879), s. 22—Decree—Execution—Agriculturist—Exemption from liability to attachment or sale—Absence of proof of exemption—Jurisdiction of the Court to order sale.* S. 60 of the Civil Procedure Code (Act V of 1908) lays down the general rule that property liable to attachment and sale in execution of a decree is lands, houses, etc., belonging to the judgment-debtor. An agriculturist, in order to resist the application of that general rule, must prove that he belongs to the privileged class so as to render s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) applicable to his case. In the absence of such proof the exemption from liability to attachment or sale does not exist for the purpose of execution-proceedings and the executing Court has, therefore, complete jurisdiction to make the order for sale. NARAYAN ANANDRAM *v.* GOWBAI (1912) . **I. L. R. 37 Bom. 415**

2. ——— *Transfer of Property Act (IV of 1882), s. 130—Trusts Act (II of 1882), s. 5—Contract Act (IX of 1872), s. 2 (i)—Married Women's Property Act (III of 1874)—Life policy exprssed to be for the benefit of the wife of the assured—Attachment of the policy by the judgment-creditors of the deceased assured—Suit by the widow of the assured for a declaration that the policy was not liable to attachment—Dismissal of suit.* A policy of insurance effected by the assured upon his own life was expressed to be for the benefit of his wife. Subsequently upon the death of the assured his judgment-creditors having attached the policy,

**CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd***

**——— s. 60—*contd.***

his widow applied to raise the attachment. Her application being rejected, she filed a suit for a declaration that the policy was not liable to attachment in execution of the defendants' decree. *Held*, dismissing the suit, that under s. 60 of the Civil Procedure Code (Act V of 1908) the policy was attachable as 'a security for money or saleable property belonging to the judgment-debtor over which he had a disposing power which he might exercise for his own benefit' The policy was a contract between the deceased and the Insurance Company expressed to be for the benefit of the wife of the assured whereby the Company promised, on proof of the death of the assured, to pay the policy monies to the trustee or trustees who might be appointed by the assured by separate writing, and in default of trustees to the beneficiary (that is, the widow of the assured) and if the beneficiary be dead, to the assured's heirs, executors, administrators or assigns. Unless and until the appointment of trustees on behalf of the wife, it was in the power of the assured at any time to put an end to the contract by ceasing to pay the premia or otherwise to defeat the expectation of his wife by assigning the policy to a creditor. He could divest himself of his beneficial interest in the policy only by assignment in writing as provided by s. 130 of the Transfer of Property Act (IV of 1882) or signed declaration of trust as provided by s. 5 of the Trusts Act (II of 1882). He had adopted neither course. The policy on his death, therefore, formed part of his estate, the right of action against the Company being in his executors or other representatives untrammelled by any trust in favour of his wife. Married Women's Property Act (III of 1874) is not applicable to Hindus There is nothing in the Contract Act (IX of 1872) to show an intention that a person not a party to the contract can sue on it. *In re Flavell, 25 Ch. D. 89, Bhikaji* v. *Dattatraya, 2 Bom. L. R. 888, Samuel* v. *Ananthanatha, I L. R. 6 Mad. 351, Chinnaya Rau* v. *Ramaya, I. L. R. 4 Mad 137*, distinguished. SHANKAR VISHVANATH *v.* UMABAI (1913) . **I. L. R. 37 Bom. 471**

**——— s. 60, cl. (2) (*b*)—*Army Act, 1885, (44 & 45 Vict.), s. 136—Officer in the British Army serving in India—Money decree—Execution—Salary not liable to attachment.*** S. 60, cl. (*2*) (*b*) of the Civil Precedure Code (Act V of 1908) leaves the provisions of the Army Act, 1885 (44 & 45 Vict) untouched. S. 136 of the Army Act, 1885 (44 & 45 Vict.), amended in 1895 provides, that the salary of the officer in the British Army serving in India shall be paid to him without deduction unless the Legislature in India has directed to the contrary in that behalf. There is no law in India which expressly or by necessary implication directs that such officer's salary is liable to attachment in execution of a decree. VELCHAND *v.* BOURCHIER (1912)

**I. L. R. 37 Bom. 26**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 60—*contd.*

——— s. 60 (c)—*Execution of decree—Attachment—Objection that attached property is the house of an agriculturist—Judgment-debtor both zamindar and agriculturist—Burden of proof* Where a judgment-debtor whose house was attached in execution of a decree took objection that the house was the house of an agriculturist to which s. 60 (c) of the Code of Civil Procedure applied and was not susceptible of attachment, and it was found that the judgment-debtor was both an agriculturist and a zamindar. *Held*, that it lay on the judgment-debtor to prove that the house was strictly of the nature contemplated by the provisions of s. 60 (c) JAMNA PRASAD RAUT *v* RAGHUNATH PRASAD (1913) **I. L. R. 35 All. 307**

——— s. 60, proviso, cl (n)—*Annuity made payable personally to judgment-debtor, but charged on property, if may be attached and sold in execution—Restraint on alienation, illegal—Spendthrift trust, when valid, involuntary sale of—Direction in execution for payment of annuity in Court, if valid—Annuity charged on property distinguished from covenants to pay future maintenance. P* finding himself unable to pay his debts conveyed all his properties for consideration to his son who assumed the payment of specific debts and agreed to pay to *P* a monthly sum of Rs. 4,000 payable on the first day of each month and two annual sums of Rs. 2,000 and Rs. 1,200 respectively. These sums were made first charges on a portion of the estate conveyed, subject to the then existing mortgages executed by the vendor. In the deed it was further provided that the allowance was not to be alienated by the vendor in any manner and that the sums as they fell due were in no circumstances to be payable to, or demandable by, any person other than the vendor. The respondent having obtained a decree for money against *P* applied for attachment and sale of the right, title and interest of *P* in the monthly allowance payable from and charged upon the estate in the hands of the vendee *P* objected that the right to the annuity was not saleable property within s. 60, Civil Procedure Code. The Subordinate Judge overruled the objection and issued a prohibitory order directing the payment of the allowance into Court periodically as it fell due. *Held*, that the right sought to be attached was saleable property within the meaning of s. 60, Civil Procedure Code, being a right to receive money charged upon property and enforceable if necessary by sale thereof. It was not a mere right to receive future maintenance within cl (*n*) of the proviso to that section. That the clause making the allowance inalienable and payable only to the vendor was an illegal restraint on alienation and did not, even if considered valid as being in the nature of a spendthrift trust, necessarily imply a bar to involuntary alienation at the instance of creditors. That the direction for payment into Court of the allowance as it fell due was contrary to law, the judgment-creditor being entitled only to bring to sale the right of the judgment-debtor who would therefore be entitled to take out the sums already deposited in Court in pursuance of the erroneous order of the Subordinate Judge. PADMANUND SINGH *v.* RAMA PROSHAD MOHI (1912) . . . **17 C. W. N. 662**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 60—*concld.*

——— s. 66—*Execution of decree—Benami purchase—Claim against certified purchaser, but not by representative of the real purchaser.* The widow of one Bhola Nath purchased a house at a Civil Court auction sale in the name of her son-in-law Baldeo and incorporated it into another house left by her husband who had died sonless. On her death one of her daughters claimed the house as an heir of her deceased father. The son-in-law in whose name the house was purchased raised the plea that he was the certified auction-purchaser and the suit was barred by s. 66 of the Code of Civil Procedure. *Held*, that as the plaintiff did not claim through the widow, but through the widow's husband, her father, the suit did not come within the purview of s. 66 of the Code *Ram Narain* v. *Mohanan, I. L. R 28 All. 82*, distinguished. NARAIN DEI *v.* DURGA DEI (1913) . . . **I. L. R. 35 All. 138**

——— s. 68, O. XXI, r. 100—*Decree—Execution proceedings transferred to Collector—Sale—Auction purchaser placed in possession of property—Application by person wrongly dispossessed to be made to Collector and not to Civil Court—Collector not ministrial officer—Jurisdiction—Civil Court* Where execution proceedings are transferred to a Collector, and a person is wrongly ousted or dispossessed under the Collector's order, he should apply to the Collector, and not to the Court, complaining of such ouster or dispossession. O. XXI, r. 100 of the Civil Procedure Code, 1908, has no application to a case where the execution of the decree has been transferred to the Collector, and he has acted under the powers conferred on him by the Local Government under s. 70 of the Code. RAGHO CHANDRARAO *v.* HANMATI CHANDRARAO (1913) . . **I. L. R. 37 Bom 488**

——— s. 73, O. XXI, r. 89.

*See* RATEABLE DISTRIBUTION.
**I. L. R. 40 Calc. 619**

——— s. 73—*Rateable distribution of assets, application for—Applicant whether real decree-holder, execution Court if may determine.* It is competent to the execution Court to determine whether an applicant for rateable distribution of assets under s 73 of the Code of Civil Procedure is a real decree-holder or a benamidar for the judgment-debtor. *In re Sundar Das, I. L. R. 11 Calc 42, Chaugan Lal* v. *Fazar Ali, I. L. R 13 Bom. 134*, followed. *Raghu Nath Guzrati* v. *Rui Chatrapat Singh, 1 C. W. N. 633*, referred to. PURAN CHAND BOID *v.* PURENDRA NARAIN SINGH (1912) . **17 C. W. N. 326**

——— s. 75—*Commissioner, trial of suit on merits, if can be delegated to.* Where the Subor-

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 75—*concld.*

dinate Judge after framing issues and considering preliminary objections referred the case to a Commissioner for trial on the merits. *Held*, that the power of a Court to issue a commission is defined in s. 75 of the Code of Civil Procedure (Act V of 1908), and the Subordinate Judge has in this case improperly delegated his judicial functions to a Commissioner. RAM NARAIN SINGH *v.* ODINDRA NATH MUKERJEE (1911) **17 C. W. N. 369**

——— s. 80.

*See* NOTICE . **I. L. R. 40 Calc. 503**

——— *Suit against public officer—Official Assignee—Suit for injunction—Notice.* A suit brought against a public officer (*e.g.*, the Official Assignee, Bombay) to restrain him from doing an act as such officer, can be brought without giving notice as required by s. 80 of the Civil Procedure Code. *Flower* v. *Local Board of Low Leyton, 5 Ch. D. 347*, followed NAGINLAL CHUNILAL *v.* OFFICIAL ASSIGNEE, BOMBAY (1912) . . **I. L. R. 37 Bom. 243**

——— s. 86.—*Suit against Ruling Chief—Sanction of Governor General in Council—Suit for declaration of title to land, sanctioned by Governor-General in Council—Amendment of plaint by addition of prayer for recovery of possession—Subsequent sanction of Governor-General in Council for suit for recovery of possession.* Where the plaintiff with the sanction of the Governor-General in Council obtained under s. 86, Civil Procedure Code, instituted a suit in the Court of the Subordinate Judge of Rungpur against His Highness the Maharaja of Cooch Behar for a declaration that the plaintiff was entitled to certain lands within the jurisdiction of that Court and that a certain map prepared by the Settlement Officer was incorrect and the Court on the application of the plaintiff, after the defendant filed his written statement pleading, *inter alia*, that the plaintiff was never in possession of the lands in dispute, and the suit was barred by limitation, amended the plaint by the addition of a prayer for recovery of possession and framed an issue as to whether the suit as amended by the addition of a prayer for recovery of possession was instituted with the consent of the Governor-General in Council within the meaning of s. 86, Civil Procedure Code, or was liable to be dismissed and decided it in favour of the plaintiff and the plaintiff subsequently obtained a fresh sanction from the Governor-General in Council for the institution of a suit for recovery of possession of the land in dispute, the High Court set aside the order of the lower Court deciding the issue in question in favour of the plaintiff and sent back the case to the lower Court so that the plaintiff might apply to that Court for leave to withdraw the plaint with liberty to bring a fresh suit on the same cause of action and on the new sanction. NRIPENDRA NARAYAN BHUP *v.* MANINDRA CHANDRA NUNDY (1911) . . . . **17 C. W. N. 1242**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— s. 89, O. XXIII, r. 3, and Sch. II—*Arbitration—Suit referred to arbitration by the parties without the intervention of the Court—Award, recording of, in such cases—Procedure to be adopted in case an award is disputed.* Where a suit which is pending is referred by the parties to arbitration, without the intervention of the Court, and an award is made, the submission and the award may, if the Court sees fit, be recorded as an agreement adjusting or compromising the suit and a decree may be passed in terms of such award and the Court has power to inquire into a disputed compromise and to record it, if satisfied that the compromise was properly arrived at. The procedure to be followed in such cases is that laid down in Order XXIII, rule 3, and not that laid down in the Second Schedule of the Civil Procedure Code. The provisions of the Second Schedule do not apply to or contemplate a reference to arbitration by parties to a suit which is pending outside the suit and without the intervention of the Court and the operation of the Second Schedule is excluded by the words used in s 89 of the Code, "Save in so far as is otherwise provided by ..... or by any other law for the time being in force," which last words are applicable to O. XXIII, r. 3. HARAKHBAI *v.* JAMNABAI (1912) **I. L. R. 37 Bom. 639**

1. ——— s. 92.—*Public religious trust—Suit to recover trust property from strangers.* The provisions of section 92 of the Civil Procedure Code (Act V of 1908) do not apply to a suit, brought by the trustees of a public religious trust, to recover property belonging to the trust which has gone wrongfully into the possession of strangers to the trust. MALHAR BHAGVANT *v* NARASINHA KRISHNA (1912) . . **I. L. R. 37 Bom. 95**

2. ——— *Waqf—Suit for declaration of plaintiff's right as mutawalli and for possession—Jurisdiction.* Where the plaintiff came into court alleging that he was the rightful *mutawalli* of a certain *waqf* and that the defendant, on the death of the last incumbent, had wrongfully taken possession of the *waqf* property, and asking to be put into possession thereof as *mutawalli*, it was *held* that this was not a suit which fell within the purview of s. 92 of the Code of Civil Procedure and was properly filed in the court of a Subordinate Judge. *Budree Das Mukim* v. *Choonn Lal Johurry, I. L. R. 33 Calc. 789*, and *Ghelabhai Gavrishankar* v. *Uderam Icharam, I L. R 36 Bom. 29* referred to. *Muhammad Ibrahim Khan* v. *Ahmad Saiyid Khan, I. L. R. 32 All 503*, and *Said Ali* v *Ali Jan, I. L. R. 35 All. 98*, distinguished. MUHAMMAD ABDUL MAZID KHAN *v* AHMAD SAID KHAN, (1913) . . . . **I L. R. 35 All. 459**

——— s. 92 (*1*)—*Procedure—Mahomedan law—Waqf—Trust for a public purpose of a religious or charitable nature.* Where a trust is a trust created for a public purpose of a religious or charitable

**CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.***

——— s. 92—*concld.*

nature (in this case a *waqf* under the Mahomedan law) no suit can be maintained for the removal of a duly appointed trustee, save in conformity with the provisions of s. 92, sub-s (*1*), of the Code of Civil Procedure SAIYD ALI *v.* ALI JAN (1912) . . . . **I. L. R. 35 All. 98**

——— s. 94 (*e*)—*Temporary injunction, application for—Order by Court calling upon defendant to furnish security and submit accounts—Order if made with jurisdiction—Appeal—Revision* Where on the plaintiff's application for the issue of a temporary injunction restraining the defendant from working mica mines on the property in suit, the Court passed order directing the defendant to furnish security to the extent of Rs 5,000 and submit accounts of the minerals appropriated every week from the date of the application *Held*, that the order was not one passed under r. 1 of O XXXIX of the Civil Procedure Code and was not appealable under cl (*r*) of r. 1 of O. XLIII. That the order was an interlocutory order made under cl. (*e*) of s. 94 of the Code to prevent the ends of justice from being defeated and should not be set aside in revision . SITO MAHTON *v.* F. F. CHRISTIAN (1912) . . **17 C. W. N. 318**

——— s. 97—*Preliminary decree—Appeal—Finding on preliminary issue, but no decree drawn up—Appeal not necessary—Duty of raising issues—Practice and procedure* In a suit for redemption, a preliminary issue was raised and decided that the plaintiff was an agriculturist Accounts were next taken under the provisions of the Dekkhan Agriculturists' Relief Act (XVII of 1879) and a redemption decree was passed. On appeal from the final decree, the question as to the status of the plaintiff was raised ; and the Court of Appeal decided that the plaintiff was not an agriculturist ; and varied the decree by increasing the amount of redemption. On second appeal, it was contended that the lower Appellate Court was wrong in going into the preliminary point at the stage it did : *Held*, that no appeal was necessary against the preliminary finding ; and that unless there was a preliminary decree no appeal could lie under the provisions of s 97 of the Civil Procedure Code (Act V of 1908). *Bai Divali* v. *Shah Vishnav Manordas, I L R. 33 Bom. 182*, followed. *Govind Ramchandra* v. *Vithal Gopal, I. L. R 36 Bom 536*, explained. SAKHARAM VISHRAM *v* SADASHIV BALSHET (1913) . **I. L. R. 37 Bom. 480**

——— s. 98.

*See* MINOR. . **I. L. R. 35 All. 487**

——— s. 100.—*Fact, finding of, based upon evidence assumed to exist, if contrary to law—Second appeal.* Where the lower Appellate Court not merely misunderstood the effect of a witness's deposition but referred to evidence which did not exist at all and based its decision principally, if not entirely, upon it, the decision, though on a question of fact, would be contrary to law and

**CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd***

——— s. 100—*concld.*

liable to be set aside on second appeal. *Bibee Ameerun* v. *Shaik Cherag Ali, 24 W. R. 343*, relied on. *Durga Chaudhurani* v. *Jewahir Singh Chaudhury, L. R 17 I. A. 122 I. L. R. 18 Calc. 23, Ram Rattan Sukul* v. *Nandu, L. R 19 I. A. 1 I. L R. 19 Calc. 249*, referred to. BHUPENDRA KUMAR CHUCKERBUTTY *v.* PEARY MOHAN RAY (1912) . . . . **17 C. W. N. 37**

——— s. 104 (*1*) (c)—*Arbitration award, order modifying—Appeal against, how far lies.* Cl (c) of sub s. (*1*) of s. 104 of the Civil Procedure Code does not confer an unrestricted right of appeal ; in other words, when an order has been made by which an award has been modified or corrected, in an appeal preferred against that order, the validity of the whole award cannot be called in question, the true effect of the clause being to allow an appeal against the order only in so far as it modifies or corrects the award. RAJBUNS SAHAY *v.* SOORJEE LAL (1911).. . **17 C. W. N. 617**

——— ss 109, 110, O XLV, r. 3.

*See* APPEAL TO PRIVY COUNCIL.
**I. L. R. 40 Calc. 685**

——— s. 110—*Appeal to His Majesty in Council—Requirements to be fulfilled before grant of a certificate—Decree involving some question respecting property of the value of ten thousand rupees or upwards* The value of the subject matter of the suit in the Court of first instance was over Rs. 10,000, but the value of the subject matter in dispute on appeal to His Majesty in Council was less than Rs. 10,000. On the other hand, the proposed appeal to His Majesty in Council necessarily involved a decision as to the validity of an award which dealt with property of far greater value and which had been declared by the High Court to be invalid *Held*, that the provisions of section 110 of the Code of Civil Procedure applied and a certificate should be granted. It was not necessary that at the time of presenting the application for leave to appeal there should be pending in a court a dispute respecting other property of the value of Rs. 10,000 *Macfarlane* v. *Leclaire, 15 Moo. P. C. 181, Musammat Aliman* v. *Musammat Hasiba, 1 C. W. N. 93* (*Notes*) *xcii*, and *Anand Chandra Bose* v. *Broughton, 9 B. L. R. 423*, referred to. SRI KISHAN LAL *v.* KASHMIRO (1913).
**I. L. R. 35 All. 445**

——— ss. 112, 151 ; O. XLI, r. 5 (*2*).

*See* HIGH COURT, JURISDICTION OF.
**I. L. R. 40 Calc. 955**

——— s. 115.

*See* HIGH COURT, JURISDICTION OF.
**I. L. R. 40 Calc. 477**

1. ——— *Revision, High Court's jurisdiction in—Prejudice, it must be proved—Valuation of suits—Agreement to grant mourasi lease—Suits to enforce, how valued.* Where the District Judge set aside the decision of the

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd.*

——— **s. 115**—*concld.*

Subordinate Judge as to the proper valuation of a suit and simply accepted the valuation given by the plaintiff without giving any reasons for arriving at that decision and without attempting to ascertain the materials on which that valuation was based and in fact without arriving at a judicial decision at all: *Held*, that the High Court should interfere in such a case under s. 115, Civil Procedure Code, if satisfied that the decision of the District Judge was wrong. *Amir Hassan* v. *Sheo Baksh, I. L. R 11 Calc. 6*, distinguished. Where the Subordinate Judge in his view of the value of the suit returned the plaint for presentation to the Munsif and the District Judge set aside that decision and it was contended that the High Court should not interfere as there was no prejudice: *Held*, that as the law requires that suits of a particular value should be brought in particular Courts, where an order was against that law, no question of prejudice arises in setting aside that order. Where a land was taken for clearing and bringing under cultivation, under an agreement that after a certain number of years the defendant would grant a *mokurari mourasi* lease, and a suit was subsequently brought by the lessee for a declaration of his *mourasi mokurari* title and for the execution of the lease: *Held*, that the suit was in effect one to enforce the agreement to lease. The *mourasi mokurari* title would only accrue after the lease was granted and the suit could therefore be valued on the footing of that title. PORT CANNING AND LAND IMPROVEMENT COMPANY, LD. *v.* ROSON ALI MOLLAH (1912) . . . . . **17 C. W. N. 160**

**2.** ——— *Jurisdiction, failure to exercise—Limitation Act (XV of 1877), s. 7—Revision on the ground of limitation. Semble:* A Court decreeing or allowing a time barred suit or application, without considering whether it is so or not, may be said to have failed to exercise jurisdiction vested in it by law so as to bring the matter within the scope of s 115 of the Civil Procedure Code *Held*, that a Court cannot be said to have failed to exercise jurisdiction merely because it omitted to consider *ex proprio motu* the question whether a person was entitled to proceed out of time by reason of some special provision of law, *e.g.*, s 7 of the Limitation Act, such question not having been raised by him or on his behalf. The mere fact that in the headings to certain applications made in the case the person was described as a minor represented by a guardian was not sufficient to entitle him to the benefit of s. 7 of the Limitation Act or to throw upon the Court the duty of raising the point on his behalf. *Benod Behari Bhadra* v. *Ram Sarup Chamar, 16, C. W. N. 1015*, followed. PANCHU MONDAL *v* SHEIKH ISAF (1913) . . . . . **17 C. W N. 667**

——— **s. 141 O. XLVI, r. 1**—*Reference in proceeding neither a suit nor appeal—Jurisdiction of High Court.* O. XLVI, r. 1, read with s. 141, Civil Procedure Code, does not authorize a reference to the High Court in a matter which is neither a suit nor an appeal. S. 141 does not authorize a Court to invoke the jurisdiction of another Court any more than it authorizes a party to do so by way of appeal. Such right must be expressly conferred by statute. DAMODARA MENON *v.* KITTAPPA MENON (1913) . **I. L. R. 36 Mad. 16**

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd.*

——— **s. 141**—*concld.*

——— **Sch. II, para. 17**—*Agreement to refer to arbitration a pending litigation, privately, not coming under—Order filing agreement—Appeal, maintainability of—Civil Procedure Code (Act V of 1908), O. XXIII, r. 3—Mere agreement is not an adjustment under.* An order of a Court filing an agreement to arbitrate presented by the parties to a suit is the decree and is appealable as such even under the old Civil Procedure Code (Act XIV of 1882) as well as under s 104 (*d*) of the new Code. *Ghulam Khan Muhammad Hassan, I. L R. 29 Calc 167, Narayana Rao* v. *Sarabaiah, 21 Mad. L. J 263* and *Tiruvengadathiengar* v. *Vardinatha Ayyar, I. L. R 29 Mad 303*, followed. Paragraph 17 of second schedule to Civil Procedure Code (Act V of 1908) corresponding to s 523, Civil Procedure Code (Act XIV of 1882), covers only cases where parties without having recourse to litigation agree to refer their differences to arbitration. So an agreement to refer to arbitration a pending litigation made without the intervention of the Court cannot be filed under paragraph 17 of the second schedule. *Ghulam Khan* v. *Muhammad Hassan, I. L. R 29 Calc. 167*, and *Tincowry Dey* v. *Fakir Chand Dey, I. L. R 30 Calc. 218*, followed. A mere agreement to refer to arbitration a matter pending before a court cannot be treated as an adjustment of the dispute under O XXIII, r. 3, corresponding to s 375, Civil Procedure Code (Act XIV of 1882), though an award consequent on the arbitration may be so treated. MACLEAN, C. J.'s view in *Tincowry Dey* v. *Fakir Chand Dey, I. L. R. 30 Calc. 218*, followed. *Pragdas* v *Girdhardas, I. L. R. 26 Bom. 76, Brojodurlabh Sinha* v. *Ramanath Ghose, I L. R 24 Calc 908*, and *Lakshmana Chetti* v. *Chinnathambi Chetti, I. L. R. 24 Mad 326*, distinguished. VENKATACHALA *v* RANGIAH (1913) **I. L. R. 36 Mad. 353**

——— **O. I, r. 8.**

*See* MAHOMEDAN LAW—WAQF
**I. L. R. 35 All. 197**

——— **O. I, r. 11**—*Defendant, if may be joined as plaintiff—Bonâ fide mistake.* Where a plaintiff had brought a suit for the recovery of possession of property falsely denying the title of persons whom he had joined as defendants and asserting that an exchange by which he had transferred this property to these defendants had never been acted upon and it was found that the exchange had in fact terminated the plaintiff's title and had been acted on and that he had therefore no *locus standi* to sue the principal defendant: *Held*, on an

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. I, r. 11—*concld.*

application for liberty to join his transferee defendants as plaintiffs, that it could not be said that the plaintiff had made a *bonâ fide* mistake within the meaning of O 1, r. 10, Civil Procedure Code. GANENDRA NATH RAY CHOWDHURY *v* SURYA KANTA RAY CHOUDHURY (1912) **17 C. W. N. 462**

——— O. II, r. 2.

*See* AGRA TENANCY ACT (II OF 1901), S 34 . . **I. L. R. 35 All. 512**

——— O V, rr. 1, 2; O. IX, r. 13—

——— *Ex parte decree—Appearance of defendant in answer to a preliminary application not equivalent to appearance in answer to the plaint · Held,* that the fact that before the admission of a suit one of the proposed defendants had appeared by pleader on a miscellaneous application for his appointment as guardian *ad litem* to a minor defendant, did not absolve the court from the necessity of serving such defendant, when the suit was admitted, with a copy of the plaint and notice of the date fixed for hearing. GULAB CHAND *v.* SHANKAR LAL (1913) **I. L. R. 35 All. 163**

——— O. V, r 15—*Summons—Question of sufficiency of service of summons.* The summons in a suit was served on the paternal uncle of the defendant, who was a member of the same joint family and lived in the same house with the defendant · *Held,* that such service was insufficient in the absence of evidence that the defendant himself could not be found. MAKHAN DAS *v* MANNU LAL, (1913) . . . . **I. L. R. 35 All. 556**

——— O. V, r. 17—*Service of summons—Proper service.* Where a serving peon was informed when he went to the house where the defendant ordinarily resided that the latter had gone to Vizagapatam in the Madras Presidency, and he thereupon affixed a copy of the notice on the outer door of the house, and it appeared that the defendant did not return from Vizagapatam till 3 months after the date of service · *Held,* that the service was properly effected under r. 17, O. V of the Civil Procedure Code, as it was impossible for the peon in the circumstances to effect personal service on the Defendant. SITARAM SIVAMI *v* KALANDI PATRA (1911) . . . . **17 C. W. N. 999**

——— O. VI, r. 17—*Amendment of plaint, when allowed—New relief prayed, barred by limitation—Just prayer, no injustice to defendant, and no new facts.* Under O. VI, r. 17, Civil Procedure Code, a petition for an amendment of a plaint based on no new facts and asking for a further relief, *viz*, recovery of money, may be allowed even though it be barred by limitation between the date of the plaint and the date of the petition, if the same is put in before any evidence is let in and there is no injustice to the defendants. *Kisan-Das Rupchand* v. *Rachappa Vithoba, I. L. R. 33 Bom. 644, 651, Suthi Kutti* v. *Achutan Nair, 21 Mad. L. J 475,* followed. *Weldon* v. *Neal, 19 Q. B. D. 394,* distinguished. Plaintiff alleged that the defendants were his servants on a monthly pay and had charge of his shop and he claimed that the accounts kept by them in regard to the business were his property and he sued to recover these accounts · *Held,* that these facts disclosed a cause of action Plaintiff stated even in his original petition that he will file a separate suit afterwards for such amount as the accounts, whose recovery was sought for in the plaint, might disclose as due from the defendants. He afterwards thought it desirable to claim, by an amendment, the recovery of Rs. 800, which approximately estimated would be the amount due to him, stating that he would pay additional court-fee if more was actually found due on looking into the accounts. *Held,* that the amendment prayed for ought to have been allowed. SEVUGAN CHETTY *v.* KRISHNA AYYANGAR (1913) . . **I. L. R. 36 Mad. 378**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. VI, r. 17—*concld.*

——— O. VII, r. 11.

*See* COURT-FEE . **I. L. R. 40 Calc. 615**

——— O. VII, r. 6.

——— *Set-off—Claim barred according to lex fori but not according to lex loci contractus.* In a suit filed against him in the United Provinces, the defendant claimed to set off a debt, which, though it would have been barred by limitation in the United Provinces, was not barred according to the local law (that of the Punjab) applicable thereto · *Held,* that the set-off claimed was admissible. BACHCHAN LAL *v.* BANARSI DAS (1913) . **I. L. R. 35 All. 238**

——— O. IX, r. 8—*Appeal—Dismissal for non-appearance of appellant—Appellant present but unrepresented and unable to argue the appeal himself—Procedure* On the date fixed for the hearing of an appeal, one of the two appellants (the other being a woman) appeared before the Court and applied for an adjournment to enable him to procure the attendance of his pleaders. He was called on to argue his appeal, but he said he had nothing to say, and thereupon the appeal was dismissed on the ground that it had not been supported: *Held,* that in these circumstances the Court was not justified in dismissing the appeal for want of prosecution, but was bound to consider the grounds of appeal and to decide the case on the merits. BALDEO PRASAD *v* KUNWAR BAHADUR (1912) . . . **I. L. R. 35 All. 105**

——— O. IX, rr. 8 and 9; O. XXII, rr. 3 and 9—*Non-appearance of plaintiff—Dismissal of suit—Order setting aside dismissal when plaintiff was found to have been dead at the time suit was dismissed—Orders and rules applicable only to defaulters wrongly applied in case of dead party.* On the non-appearance of the plaintiff in a suit against the respondent, an order was made on the 4th of

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. IX, rr. 8, 9—*concld.*

July, 1911, dismissing the suit for default The plaintiff was in fact dead at the time the order was made, and his son the appellant was engaged in performing his father's funeral ceremonies and was unable to attend Court. These facts were brought to the notice of the Deputy Commissioner in an application made under O. XXII, rr. 3 and 9, of the Civil Procedure Code (Act V of 1908) by the appellant as the heir and legal representative of the plaintiff, which was filed and accepted by the Deputy Commissioner within the time allowed by law and an order was made on the 11th of September setting aside the dismissal of the suit, and substituting the name of the appellant on the record in place of the deceased plaintiff. On an application for revision of the Deputy Commissioner's order of the 11th of September made by the respondent under s 115 of the Code to the Court of the Judicial Commissioner, that Court reversed the order, and confirmed that decision on review, mainly on the grounds that the order of the 4th of July dismissing the suit was a proper order under O. IX, r 8, of the Code; that the appellant's application to set aside that order was not within time, and was therefore barred; and that O XXII, r. 3, of the Code applied only to a still pending suit, and not to one that had been dismissed. *Held,* (reversing the decisions of the Court of the Judicial Commissioner), that these decisions were vitiated by applying to a dead man orders and rules applicable only to mere defaulter. An "abuse of the process of the Court" within the meaning of s 151 of the Code had occurred by the course adopted in the Judicial Commissioner's Court Quite apart from that section any Court might rightly have considered itself to possess inherent power to rectify the mistake inadvertently made in dismissing the suit The order of the Deputy Commissioner setting aside the dismissal was manifestly sensible and correct, and their Lordships restored it, and remitted the case to India to be disposed of on the merits. DEBI BAKHSH SINGH *v.* HABIB SHAH (1913). . **I. L. R. 35 All. 331**

——— O. IX, r 13.

——— *Ex parte decree, application to set aside, to Original Court, after appeal determined by Appellate Court, if and when lies.* Where the plaintiff sued D, his four sons and two nephews on a mortgage executed by D and D's father (now dead) and the suit having been contested by D's nephews only, a decree was made in plaintiff's favour in the presence of D's nephews but *ex parte* against D and his sons directing the sale of a two-thirds of the mortgaged property (being the share of D and his father) and making all the 7 defendants personally liable for the unsatisfied balance, if any, of the mortgage-debt; and against that decree an appeal was preferred by plaintiff wherein he sought to have a decree for the sale of the share of D's nephews as well,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. IX, r. 13—*concld.*

and the latter also preferred cross objection against the portion of the decree which made them personally liable; and both appeal and cross-objections were allowed by the High Court: *Held,* that though D and his sons had been joined as respondents in the appeal and a self-contained decree was made therein, as no relief was claimed in the appeal against them, there was still as against D and his sons a subsisting *ex parte* decree over which the Subordinate Judge had control, and he had jurisdiction to entertain an application by D and his sons to set aside the decree. BRIJALALL SINGH *v.* MAHADEO PROSAD (1911).

**17 C. W. N. 133**

——— O. IX, r. 13, proviso.

——— *Decree in favour of contesting defendants and against non-appearing defendants if may be wholly set aside at the instance of latter—Refusal of Court to set aside—Plaintiff, if may ask for the setting aside of whole decree in revision. Semble* The proviso to r. 13, O. IX of the Civil Procedure Code (Act V of 1908) does not authorise the Court, in setting aside a decree at the instance of defendants against whom it had been obtained *ex parte,* to set it aside in so far as it is in favour of the contesting defendants. ALI AHMED KHAN *v.* C. R. BROWN (1912)

**17 C. W. N. 142**

——— O. XX, r. 2—*Judgment—Judgment written by the judge who heard the case after his transfer from the division and pronounced by his successor in office.* A Judge may pronounce a judgment written but not pronounced by his predecessor in office, and this notwithstanding that at the time the judgment was written the Judge who wrote it had ceased to be the Judge of the Court in which the case was tried. *Satyendra Nath Roy Chaudhuri* v. *Kasiura Kumari Ghatwalin, I. L. R. 35 Calc., 756,* followed. BASANT BIHARI GHOSHAL *v.* SECRETARY OF STATE FOR INDIA (1913) . . . . **I. L. R. 35 All. 368**

——— O. XX, r. 18—*Partition—Appeal—Preliminary decree—Subsequent interlocutory order giving directions for preparation of final decree.* In a suit for partition, a preliminary decree was passed and confirmed on appeal. When the case went back to the Court of first instance for the passing of a final decree that Court passed an order directing that actual partition should be made in accordance with certain directions then given by it: *Held,* that no appeal would lie against such an order, but its propriety could be questioned in appeal from the final decree. The Code of Civil Procedure contemplated the preparation of only one preliminary decree, and the order in question could not be regarded as more than an interlocutory order containing directions as to the preparation of the final decree. BHARAT INDU *v.* YAKUB HASAN (1913) . . **I. L. R. 35 All. 159**

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd.*

——— **O. XXI, r. 2—**

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), s. 231

**I. L. R. 36 Mad. 357**

——— **O. XXI, r. 2 ; O. XXXIV, r. 5.**

*See* EXECUTION OF DECREE.

**I L. R. 35 All 178**

——— **O. XXI, r. 15.**

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), S 231.

**I. L. R. 36 Mad. 357**

——— **O XXI, r. 16**—*Execution of decree—Decree for money and costs of suit—Transfer of decree as to costs merely Held,* that a decree for payment of a sum of money and for costs of the suit is one and indivisible, and the decree-holder cannot transfer the decree so far merely as it may be a decree for costs, retaining the right to execute the decree for the main sum awarded. RAM CHANDRA NAIK KALIA *v.* ABDUL HAKIM (1913).

**I. L. R. 35 All. 204**

——— **O. XXI, r. 25**

*See* ATTACHMENT **I. L. R 40 Calc. 849**

——— **O. 21, r. 57**—*" Strike off," meaning of, if amounts to dismissal of attachment—Limitation.* Where a decree was passed on the 15th April 1897, and on the 22nd February 1909 execution was commenced and it was ordered that the land should be attached and proclamation should be issued, the 15th April being fixed for the date of the proclamation ; and on the 15th April the proclamation not having been made owing to laches on the part of the decree-holder an order was passed—" proclamation not filed, struck off " *Held,* that this amounted to a dismissal of the attachment and a fresh application for execution after the 15th April 1909 was out of time. MANDHYAN SHEIKIYA *v.* BADRAM DALNI (1912)

**17 C. W. N. 204**

——— **O. XXI, rr. 84, 89, 92**—*Execution of decree—Sale of immovable property—Acceptance of final bid deferred—Application to set aside sale—Limitation Held,* that a sale of immovable property in execution of a decree is not complete until the sale officer has accepted the final bid and the purchaser has paid in the deposit of 25 per cent. of the purchase money required by r 84 of O. XXI of the Code of Civil Procedure, 1908. The period of thirty days prescribed by r 92 will not, therefore, begin to run against a person applying under r. 89 if for any reason the final bid remains for a time unaccepted by the sale officer. MUNSHI LAL *v.* RAM NARAIN (1912).

**I. L. R. 35 All. 65**

——— **O. XXI, r. 88**—*Execution of decree—Sale in execution—Pre-emption—Title of pre-emptor defeasible : Held,* that a title to a share in undivided immovable property sold in execution of a decree which is still defeasible at the date of a sale in execution, is not sufficient to support a claim for

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd*

——— **O. XXI, r. 88**—*concld.*

pre-emption under O XXI, r. 88, of the Code of Civil Procedure, 1908. *Kamta Prasad v. Mohan Bhagat, I L. R 32 All. 45,* and *Nabihan Bibi v Kauleshar Rai, 4 All L. J 351,* followed. ABDUL GHAFUR *v.* GHULAM HUSAIN (1913).

**I. L. R. 35 All. 296**

——— **O. XXI, r. 89**—*Civil Procedure Code (Act XIV of 1882), s. 310A—" Decree-holder " —Execution of decree—Auction sale—Application by judgment debtor to set aside sale—Deposit within thirty days—Auction purchaser not a necessary party to the application—Notice to all parties—Rateable distribution claimed by other decree-holders—Satisfaction of the decree under which the property was sold.* The deposit under O. XXI, r 89 of the Civil Procedure Code (Act V of 1908) must be made within thirty days from the date of sale It is not necessary that the notice required to be given under r. 92 of the said order should be given within thirty days of the date of sale. Once notice has been given under r 89 to all persons affected thereby, the Court has full authority to set aside the sale. A decree-holder having applied for execution of his decree, the proceedings in execution were transferred to the Collector. He issued a proclamation and proceeded with the sale, but before the auction sale took place, he received from the Court intimation of applications made by other decree-holders against the same judgment-debtor for rateable distribution. The Collector inserted references to the applications in his proclamation of sale and the property was subsequently sold Then within thirty days the judgment-debtor applied to have the sale set aside under O. XXI, r 89 of the Civil Procedure Code (Act V of 1908) on depositing in Court for payment to the purchaser a sum equal to five per cent. of the purchase money and for payment to the decree-holder the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered Although the deposit was sufficient to satisfy the judgment-debt of the creditor, he objected to the judgment-debtor's application on the ground that the deposit was insufficient because the amount deposited should have been sufficient to satisfy not only his decree but also the claims of those decree-holders whose applications for rateable distribution had been brought to the notice of the Collector before the sale *Held,* setting aside the sale, that the term " decree-holder " in O XXI, r. 89 of the Civil Procedure Code (Act V of 1908), meant that person alone for satisfaction of whose decree the sale had been ordered and did not include other persons who would have a right to claim rateable distribution out of the sale proceeds under s 73 of the Civil Procedure Code (Act V of 1908). GANESH BAB NAIK *v.* VITHAL VAMAN (1912) . . . **I. L. R 37 Bom. 387**

——— **O. XXI, rr. 89, 90**—*Application under latter if may proceed after application under the*

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXI—*concld*

*former dismissed—Transferee of non-transferable occupancy holding, if may apply* There is no prohibition in the Code against an application being made under r 90 of O XXI of the Civil Procedure Code after an application under r. 89 has been made and has been withdrawn or dismissed Rr 89 and 90 of the Civil Procedure Code permit of applications by persons who could not have applied under ss. 310A and 311 of the Civil Procedure Code of 1882. BASIRUDDIN *v* FAIMULLA (1911). **17 C. W. N. 476**

——— O. XXI, r. 90—*Attachment before judgment—Property sold in execution—Locus standi of attaching plaintiff to apply to set aside sale.* A plaintiff who has attached immoveable property before judgment, has no present interest in such property and is not entitled to apply under O. XXI, r. 90 to set aside a sale of the property in execution of a decree *Sewdat Ray* v *Sree Canto Maity, I. L. R. 33 Calc 639, 643 10 C. W N. 634, Basiram Malo* v *Kattyani Debi, I. L R 38 Calc. 448 . 15 C. W. N 795*, relied on JOGENDRA NATH CHATTERJEE *v.* MONMOTHA NATH GHOSH (1912). **17 C. W. N. 80**

——— O. XXI, rr 90, 92—*Application to set aside sale made before the new Code came into force—Fraud, general allegation of—Second appeal.* The fact that the execution-sale took place and the application to set it aside on the ground of fraud was made before the new Code of Civil Procedure came into operation does not make the order passed on the application after the new Code came into force subject to a second appeal under the provisions of the old Code General allegations of fraud unaccompanied by particulars are insufficient even to amount to an averment of fraud of which any Court ought to take notice *Wallingford* v *The Mutual Society, L R 5 A C 685, 697*, followed. RAJ MOHAN PAL *v.* GOVINDA CHANDRA PAL (1912) . **17 C. W. N. 524**

*See* ALSO BHADRESWAR GOLOI *v* BISHNU CHARAN SEN (1910) **17 C. W. N. 525n**

——— O. XXII, r. 10—*Assignee's application to be substituted for plaintiff, and to add plaintiff's son as defendant—Ex parte order upon unsworn petition—Ex parte order if may be recalled—Notice to parties interested, necessity of.* A judicial order which may possibly affect or prejudice any party cannot be finally made unless he has been afforded an opportunity to be heard. When a person alleging to be the assignee of the interests of the plaintiff applied to be substituted in his place, and prayed that the plaintiff and his son who was no party to the suit be made defendants, and the Court made the order as prayed *ex parte* and without notice to the plaintiff: *Held*, that all orders of this character made *ex parte* are subject to the implication that they may be revoked at the instance of any party prejudicially affected thereby, and the Court has inherent power to give such

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— O. XXII—*concld.*

directions as the justice of the case may require. That it was incumbent on the Court to reconsider the order in so far as it directed the substitution of the applicant in the place of the plaintiff, when the latter preferred objections to the order. That the addition of the plaintiff's son who was no party to the suit (though he himself had consented to be so added) could not be made without hearing the defendant as the applicant appeared, by that means, to be really seeking a relief not included in the plaint as originally framed. *Semble* Applications of this character should be supported by an affidavit. AJANT SINGH *v* F T CHRISTIEN (1912) . . . . **17 C. W. N. 862**

——— O. XXIII, r 1—*Trial of a suit—Close of the trial after recording all evidence produced by both parties—Time given to the plaintiff to produce more documents—Plaintiff's application to withdraw the suit with permission to bring a fresh one—Grant of the permission for fresh suit—Material irregularity in the exercise of jurisdiction* After the case for both the plaintiff and the defendant had been closed and all their witnesses had been examined, the Court gave time to the plaintiff to adduce documents to counteract the effect of the documents already produced by the defendant. On the plaintiff's inability to adduce the documents on the appointed day, he applied for leave to withdraw from the suit with permission to file a fresh one on the same cause of action and the Court having passed an order granting the leave: *Held*, setting aside the order, that the Court acted with material irregularity in the exercise of its jurisdiction. The hearing was finished and it was improper to allow plaintiff to try and produce documents to counteract the defendant's documents. The plaintiff's failure to produce the documents was not a sufficient ground to put the defendant to the trouble and annoyance of a fresh suit. BAI KASHIBAI *v* SHIDAPA ANNAPA (1913) **I. L. R. 37 Bom. 682**

——— O. XXIII, r. 3.

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT . . **I. L. R. 37 Bom. 614**

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879) S 15 B **I. L. R. 37 Bom. 614**

——— O. XXXIV, r. 1; O. 1, r. 9—*Parties to suit—Mortgage—Joint mortgage of separate properties—Suit barred as against one mortgagee—Remaining property liable for whole debt* The separate properties of two mortgagors were jointly mortgaged to secure one debt. The mortgagee sued for sale just within limitation, making one of the heirs of one mortgagor a party defendant, and stating that nothing had been heard of the other for twenty-five years. In the written statement it was pleaded that this heir was alive, but by that time the suit as against him was time-barred: *Held*, that the unimpleaded

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd.*

——— **O. XXXIV**—*concld.*

heir of the mortgagor was not a necessary party to the suit, and that the suit might be proceeded with against the other representative of the mortgagor and his separate property for the whole amount due on the mortgage. *Jai Gobind* v *Jas Ram, All W. N. (1898) 120,* followed. *Gendan Lal* v. *Babu Ram, 9 All. L. J. 86,* distinguished. *Imam Ali* v. *Baij Nath Ram Sahu, I. L. R. 33 Calc. 613; Hakim Lal* v. *Ram Lal, 6 C. L. J 46, Krishna Ayyar* v. *Muthukumarasawmiya Pillai, I. L. R. 29 Mad. 217, Haro Kumari* v. *Eastern Mortgage Co, 7 C. L J 274;* and *Debendra Nath Sen* v. *Mirza Abdul Samad, 10 C. L. J. 150,* referred to. SANWAL SINGH *v.* GANESHI LAL (1913). **I. L. R. 35 All. 441**

——— **O. XXXIV, r. 1**—*Mortgage—Suit for sale—Intentional non-joinder of subsequent mortgagee—Effect of such non-joinder* Subsequently to the execution of a mortgage of a 4 biswa zamindari share in favour of A.S., the mortgagor executed a further (usufructuary) mortgage of a portion of the same share in favour of A. S. and his brother N S. A.S. brought a suit for sale on the earlier mortgage, but without making N. S. a party thereto: *Held,* that the effect of the non-joinder of N. S. would not be the total dismissal of the suit but only of so much of it as related to that portion of the property which was covered by the subsequent mortgage. ALAM SINGH *v.* GOKAL SINGH (1913) . . . . **I. L. R. 35 All. 484**

——— **O. XXXIV, r. 5.**

*See* COURT FEES ACT (VII OF 1870), SCH I, ART. 1; SCH II, ART. 11. **I. L. R. 35 All. 476**

——— **O. XXXIV, r. 6.**

*See* MORTGAGE . **I. L. R. 40 Calc. 342**

——— **O. XXXIV, r. 8**—*Decree for sale on a mortgage conditioned on redemption of prior mortgages—Power of Court to extend time for payment of redemption money.* When a suit for sale by a subsequent mortgagee became by reason of the intervention of a prior mortgagee also a suit for redemption of the prior mortgage and a decree was passed accordingly, it was *held* that the Court had power under O. XXXIV, r. 8, to extend the time for payment of the sum found necessary to redeem the prior mortgage, the plaintiffs having through a *bonâ fide* mistake paid into Court an insufficient amount. KALIAN v. SADHO LAL (1912) **I. L R. 35 All. 116**

——— **O. XXXIV, r. 14**—*Execution of decree—Usufructuary mortgage—Suit for possession of mortgaged property—Decree for possession and costs—Execution for costs by attachment of part of the mortgaged property* Certain usufructuary mortgagees suing for possession of the mortgaged property, which had not been delivered to them, obtained a decree for possession and for costs. In execution

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*contd.*

——— **O. XXXIV**—*concld.*

of their decree for costs, the mortgagees applied for attachment of part of the mortgaged property: *Held,* that this application was not barred by the provisions of O XXXIV, r. 14, of the Code of Civil Procedure, 1908 *Khairajmal* v *Daim, I. L R. 32 Calc. 296,* distinguished. *Muhammad Abdul Rashid Khan* v. *Dilsukh Rai, I. L. R. 27 All. 517,* referred to. HARIBANS RAI *v.* SRI NIWAS NAIK (1913) . . . **I. L. R. 35 All. 518**

——— **O. XXXIX, r. 1; O. XLIII, r. 1**—*Temporary injunction—Order refusing injunction—Appeal Held,* that an appeal lies from an order refusing, as well as from one granting a temporary injunction. LACHMI NARAIN *v.* RAM CHARAN DAS (1913). . . . **I. L. R. 35 All. 425**

——— **O. XXXIX, r. 1**—*Civil Procedure Code (Act XIV of 1882), s. 244—Temporary injunction—What Courts bound to consider before granting—Debutter estate—Decision against previous shebait, effect of, on successive shebaits—Order passed in execution case disallowing objection, effect of, on successive shebaits—Contingent right—Suit for declaration of, if lies.* The appellants obtained a decree which was ultimately affirmed by the Privy Council against P, the *shebait,* representing a *debutter* estate, for expenses incurred by their father who was the *shebait* before P in carrying on the worship of the idol and in the course of a litigation for establishing his title to the *shebaitship* which was challenged by P An application for execution of this decree was opposed by P who suggested that the decree-holders should get Rs. 1,500 per year out of the rents and profits of the *debutter* estate but the Subordinate Judge disallowed the objection on 3rd December 1910. On 12th August 1911 the respondents, the brother's son and the brother's grandson, respectively, of P, instituted a suit against the appellants and other members of the family making P also a party defendant for a declaration of their future rights to the *debutter* property as also for a declaration that that property was not liable to sale in execution of the decree obtained by the appellants. An application made on the same day to have the execution of the said decree stayed was refused by the Subordinate Judge. On 14th August 1911 the plaintiffs applied under O. XXXIX, r. 1, for the issue of a temporary injunction to stay the sale in execution of the said decree and the Subordinate Judge granted the injunction· *Held,* that the order granting injunction was wrong and improper. Before granting the injunction the Court was bound to consider how far there was any possibility of plaintiffs succeeding in the suit *Preston* v. *Luck, L R. 27 Ch. D 497, 505,* relied on. The decision in the previous suit which was contested by P as *shebait* of the *debutter* estate was binding on all successive *shebaits.* The order passed by the Subordinate Judge in the execution case on the 3rd December 1910, was an order under the provisions of s. 244, Civil Procedure Code, 1882,

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XXXIX—*concld.*

and would be binding on all successive *shebaits* The contingent interest which the plaintiffs claimed in *shebaitship* was very remote and a person cannot sue for a declaration of his right unless he has an existing right and a mere contingent right which may never ripen into an actual existing right is not sufficient to ground an action for such declaration. NAGENDRA NATH MUKERJEE *v* PROBAL CHANDRA MUKERJEE (1912). **17 C. W. N. 964**

——— O. XL, r. 1.

*See* RECEIVER . **I. L. R. 40 Calc. 862**

——— O. XLI, r. 10, and s. 129—*Bombay High Court Rules, r 725—Deposit of security by appellant residing outside British India in an appeal from the original civil jurisdiction of the Bombay High Court, rules governing* The Bombay High Court in its original civil jurisdiction is not bound to demand security from an appellant residing outside British India for the costs of the appeal or of the original suit or of both as provided in O XLI, r 10, of the Civil Procedure Code The provisions contained in r 725 of the Bombay High Court Rules deal with the deposit of security in all appeals from the original jurisdiction of the High Court, and are inconsistent with the provisions of O. XLI, r 10, of the Civil Procedure Code and accordingly by virtue of s 129 of the Civil Procedure Code, O. XLI, r 10 does not apply *Semble* It is not clear whether it is imperative on the Bombay High Court, in cases where O. XLI, r 10, does apply, to demand security from an appellant residing outside British India for the costs of both the appeal and the original suit BEHRAM JUNG *v.* HAJI SULTAN ALI SHUSTRY (1912) **I. L. R. 37 Bom. 572**

——— O XLI, r. 11—*Civil Circular, issued by the Bombay High Court, No. 51—Summary dismissal of appeal—Necessity of writing a judgment* A lower Court of Appeal must write a judgment when it dismisses an appeal under O. XLI, r 11 of the Civil Procedure Code (Act V of 1908), as provided by Civil Circular 51 issued by the High Court, Bombay *Tanaji Dagde* v *Shankar Sakharam, I. L. R 36 Bom 116*, overruled HANMANT *v* ANNAJI HANMANTA (1913) **I. L. R. 37 Bom. 610**

——— O. XLI, r. 20; O. XXII, r. 10; O. I, r. 10.

*See* PARTIES. . **I. L. R. 40 Calc. 323**

——— O. XLI, r. 22—*Cross-objections, who may file and against whom—Co-respondent, cross-objections not ordinarily allowed as against.* The ordinary rule is that the cross-objections provided for by O XLI, r 22 of the Code of Civil Procedure are cross-objections which are aimed against an appellant from a decree of a lower Court and are not cross-objections against a co-respondent In any case such cross-objections will not be allowed as against a co-respondent where the respondent could have referred them by way of appeal. NURSEY VIRJI *v* ALFRED H. HARRISON (1913) **I. L. R 37 Bom. 511**

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd*

——— O. XLI—*contd.*

——— O. XLI, r. 23—*Decision of first Court not on a preliminary point—Power of appellate Court to remand* There are cases in which an order of remand may be made even where the disposal has not gone on a point which can strictly be called a preliminary point *Kuppalan* v. *Kunjuvalli, 9 Mad L. T. 373*, followed. A case in which there was no regular hearing of a matter by the first Court and the evidence on which the disposal of the case was made by that Court was not placed on record, is a fit one for remand JAMBULAYYA *v.* RAJAMMAL (1913) **I. L. R. 36 Mad. 492**

——— O XLI, r. 23; O. XLIII, r. 1 (*u*)—*Suit dismissed for default of appearance, but restored by Appellate Court—Remand—Appeal Held*, that no appeal would lie from an appellate order directing that a suit which had been dismissed because neither party had appeared should be restored to the file of pending cases and heard WAHID-UN-NISSA *v* KUNDAN LAL (1913) . . . . **I. L. R. 35 All. 427**

——— O. XLI, r 25—*High Court, if bound by opinion of Bench expressed in remanding a case* Where a Bench of the High Court, in remanding an appeal for a finding under s. 566 of the Civil Procedure Code of 1882, had expressed an opinion as to the way in which the case should be decided upon the finding, the Bench before which the appeal comes up for final disposal after the finding of the Court below has arrived, will not be bound by that opinion *Bonchari Ghosh* v *Ainuddin Biswas, 24 W. R 137, Lachman Prasad* v. *Jamna Prasad, I. L R 10 All 162, Mubarak Hossain* v *Bihari, I L R. 16 All 306*, referred to GANENDRA NATH RAY CHOUDHURY *v* SURYA KANT RAY CHOUDHURY (1912). **17 C. W. N. 462**

——— O. XLI, r 33—*Civil Procedure Code (Act XIV of 1882), ss 562, 564—Repeal of s 564 in the new Code—Effect of repeal—Remand order by the Court of appeal* In a suit to redeem a mortgage, the first Court took accounts between the parties and decreed redemption. The lower Appellate Court having found that there were some errors in the taking of accounts and that a piece of land wrongly taken to be in the mortgagee's possession, reversed the decree and remanded the suit for trial to the first Court. On appeal from the order of remand · *Held*, setting aside the order of remand, that an Appellate Court could remand a case to the trial Court only when the latter had disposed of the suit upon a preliminary point and the decree was reversed in appeal *Held*, further, there was no reason why the first Court's decree as such should have been reversed, for according to both Courts, the possession was to be restored to the plaintiffs, and the only difference between

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XLI—*concld.*

the two was in small particulars of accounts which could have been met by a slight re-adjustment of the decree *Per* CURIAM. The removal of s. 564 of the Civil Procedure Code of 1882 has apparently no other object but to withdraw those restrictive provisions of the section which in practice had been found embarrassing; such restrictions occurring, for instance, in cases where the Appellate Court has allowed an amendment of the pleadings, or has added a party to the record NAROTTAM RAJARAM *v* MOHANLAL KAHANDAS (1912) . **I. L R. 37 Bom. 289**

——— O. XLIII, r. 1, cl. (*a*)—*Valuation of claim for purposes of jurisdiction—Decision, if final and bars appeal* Where a suit for the declaration of the plaintiff's right to an easement and for a permanent injunction to restrain the defendant from interfering with such right was valued at Rs. 1,100, but the Court having found the value to be Rs 790 returned the plaint for presentation to the proper Court: *Held,* that an appeal lay against the order under cl. (*a*) of r 1 of O XLIII of the Civil Procedure Code S. 12 of the Court Fees Act has no application to a case where the valuation, though it may indirectly affect the amount of Court-fees payable on the plaint, is necessary for the purpose of determining the jurisdiction of the Court to entertain the suit. *Brojo Kumar* v. *Eshan Chandra, 3 C L. R 79,* referred to. PEARI SHA *v.* SURUJMAL MARWARI (1912) **17 C. W. N. 503**

——— O. XLIII, r. 1, cl. (*s*)—*Mortgage suit—Appointment of Receiver at mortgagee's instance under terms of mortgage deed—Court's order on Receiver to pay money to mortgagor to enable him to appeal, if appealable—Interest, non-payment of, ground for appointing Receiver* When a mortgage deed provided for the appointment, at the instance of the mortgagees, of a Receiver in circumstances specified in the deed and laid down the mode in which the rents and profits were to be distributed by the Receiver, and in pursuance of these provisions a Receiver was appointed with powers to dispose of the rents and profits in a certain manner in the course of a suit brought by the mortgagees to enforce the mortgage; but after a preliminary decree for sale had been passed in the suit, the Court upon the application of the judgment-debtor passed an order directing the Receiver to pay certain sums to the judgment-debtor in order to enable him to prefer an appeal against the decree. *Held,* that an appeal lay against the order under O. XLIII, r. 1, cl (*s*) of the Civil Procedure Code. *Mohunt Anand Das* v. *Ram Perkash Das, 14 C. W. N 183,* relied on. That the Receiver not having had power to make the payments in question either under the mortgage deed or the terms of his appointment, the Subordinate Judge was wrong in making the order. The power given by Court to the Receiver "to institute or defend suits regarding the properties whether for collection of

CIVIL PROCEDURE CODE (ACT V OF 1908)—*contd.*

——— O. XLIII—*contd.*

rents or for any other purpose or the provision in the mortgage deed that pecuniary grants might be allowed for law-expenses did not justify the orders of the Subordinate Judge for payment to the judgment-debtor until after sums had been deposited in Court sufficient to recover interest due on the mortgage debt as required by the mortgage deed and the terms of appointment of the Receiver The mortgagee in this case not having had any payment as interest since the loan was made, was entitled under the provisions of the law to apply for the appointment of a Receiver pending the disposal of the suit. EASTERN MORTGAGE AND AGENCY COMPANY, LD. *v* FAKURUDDIN MOHAMED CHOUDHURY (1912). **17 C. W. N. 16**

——— O. XLIII, r. 1 (*r*)—*Temporary injunction—Order refusing injunction if appealable* An appeal lies against an order refusing a temporary injunction *Reasut Hussain* v *Hadjee Abdullah, I L R 2 Calc 131,* referred to. HARI LAL *v* PRAYAG RAM (1913) . . **17 C. W. N. 996**

——— O. XLVII, r 1—*Order setting aside sale, alleged to be made by consent of parties—Decree-holder alleging that order made in his absence—Review, if may be granted* Where a sale in execution of a decree was set aside upon the strength of a petition of compromise to which the decree-holder was alleged to be a consenting party, and the decree-holder subsequently applied for a review alleging that he was not present at the time when the order was made and that as a matter of fact what appears to be a consent order was in essence an *ex parte* order *Held,* that it was open to the decree-holder under these circumstances to apply for review under r. 1, O XLVII of the Civil Procedure Code. HAKIMGIR *v.* BASDEO SAHI (1911) **17 C. W N. 631**

——— O. XLVII, rr. 2, 7, sub-r. 1, cl. (*l*) —*Review of order setting aside sale by another officer —Appeal after confirmation of sale, if lies where final order not appealable.* Where an application for review of an order of a District Judge upon a ground other than the discovery of new or important matter or evidence or the existence of a clerical or arithmetical error was, owing to the absence of the District Judge, received by the Subordinate Judge who also directed notices to issue to the opposite party, and the District Judge himself passed several orders in the case relating to the postponement of the hearing and analagous matters, but died before the case could be heard on the merits; and the review application was subsequently granted by the successor in office of the District Judge *Held,* that the order granting the review was in contravention of r 2 of O XLVII of the Civil Procedure Code, and should be set aside. Where an order setting aside a sale was set aside on review and the sale confirmed · *Held,* that an appeal against the order passed on review preferred after the sale was confirmed, was not incompetent An appeal against an order granting a review would

**CIVIL PROCEDURE CODE (ACT V OF 1908)**—*concld.*

——— **O. XLVII**—*concld.*

lie under sub-r 1 of r 7 of O. XLVII even where no appeal would lie against the final decree disposing of the case. SHAMSER ALI *v.* JAGANNATH (1912) **17 C. W. N. 403**

**CLERK.**

——— **relinquishment by, of employment without consent of master.**

*See* MASTER AND SERVANT.
**I. L. R. 35 All. 132**

**CODICIL.**

*See* WILL . . **I. L. R. 40 Calc. 192**

**COERCION.**

*See* VOLUNTARY PAYMENT.
**I. L. R. 40 Calc. 598**

**COGNIZANCE.**

——— *Police report—Case made over to another Magistrate for enquiry and report—Criminal Procedure Code (Act V of 1898), ss. 173, 190 (1) (b)—Practice.* Where a Magistrate, upon receiving a police report under s. 173, does not take cognizance of the case under s. 190 (*1*) (*b*), which he is perfectly competent to do, but makes it over for enquiry and report to an Honorary Magistrate, he acts contrary to the provisions of the law. ABDULLAH MANDAL *v.* EMPEROR (1913) **I. L. R. 40 Calc. 854**

**COLLECTOR.**

*See* ABKARI ACT (V OF 1878), SS. 32, 67 . . **I. L. R 37 Bom. 101**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 3, 115.
**I. L. R 37 Bom. 114**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SCH. III, S. 7 (*1*) (*b*), SS. 69, 70 . . **I. L. R. 37 Bom. 32**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 68, O. XXI, R. 100.
**I. L. R. 37 Bom. 488**

*See* COURT OF WARDS ACT (BOM. ACT I OF 1905), S. 3 (*c*).
**I. L. R. 37 Bom. 313**

*See* HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), SS. 11, 11A.
**I. L. R. 37 Bom. 37**

*See* PENSIONS ACT (XXIII OF 1871), S. 4 . . **I. L. R. 37 Bom. 91**

*See* REVENUE JURISDICTION ACT (BOM. ACT X OF 1876).
**I. L. R. 37 Bom. 542**

——— **sale by.**

*See* ADVERSE POSSESSION.
**I. L. R. 40 Calc. 173**

——— *Jurisdiction—Complaint to Collector of the District under s. 58 (3) of the Bengal Tenancy Act (VIII of 1885)—Transfer of inquiry to Subdivisional Officer for disposal—Deputy Collector—Jurisdiction of Subdivisional Officer to hold such inquiry and to direct a prosecution for fabrication of false evidence—Bengal Tenancy Act, ss. 3 (16), 58 (3)—Government Notification of 19th September 1910—Reg. IX of 1833, ss. 20 and 21—Criminal Procedure Code (Act V of 1898), s. 476.* Under s. 3 (*16*) of the Bengal Tenancy Act and Government Notification of the 19th September 1910, a Subdivisional Officer is a "Collector" and is authorized to hold an inquiry under s. 58 (*3*) of the Bengal Tenancy Act. A Collector of the District has power, on complaint made to him, to transfer such inquiry for disposal to a Subdivisional Officer who is, under ss. 20 and 21 of Reg. IX of 1883, subordinate to the Collector, and is required to perform all the duties assigned to him by that functionary. Where, therefore, a complaint under s 58 (*3*) of the Bengal Tenancy Act was made to the Collector of the District and transferred by him for disposal to the Subdivisional Officer who found that certain rent-receipt books, filed in the course of the inquiry, had been fabricated: *Held*, that the latter had jurisdiction, under s 476 of the Criminal Procedure Code, to direct a prosecution of the offenders for offences under ss. 193 and 196 of the Penal Code. PHANINDAR SINGH *v.* EMPEROR (1913) **I. L. R. 40 Calc. 465**

**COLLECTOR OF RANGOON.**

——— **reference by.**

*See* APPEAL TO PRIVY COUNCIL.
**I. L R. 40 Calc. 21**

**COLLISION.**

*See* RAILWAYS ACT (IX OF 1890), S. 101.
**I. L. R. 37 Bom. 685**

**COLLUSION.**

*See* CONTRIBUTORY NEGLIGENCE.
**I. L. R. 37 Bom. 575**

**COLONIAL PROBATES ACT (55 & 56 VICT., c. 6).**

*See* LETTERS OF ADMINISTRATION.
**I. L. R. 40 Calc. 74**

**COMMISSIONER.**

——— **power of.**

——— *Revenue Commissioner, power to review order made by, annulling sale for arrears of revenue—Act XI of 1859, s. 25, as amended by Bengal Act VII of 1868, s. 2. Held* (affirming the decisions of the Courts in India), that a Revenue Commissioner acting under Act XI of 1859, as amended by Bengal Act VII of 1868, had, under the circumstances, no power to review his order setting aside a sale held for arrears of revenue. BAIJNATH RAM GOENKA *v.* NAND KUMAR SINGH (1913) . . . **I. L. R. 40 Calc. 552**

**COMMISSIONER OF PARTITION.**

——— **sale by.**

*See* REVIEW . **I. L. R. 40 Calc. 140**

**COMMISSIONER OF POLICE.**

——— power of.

*See* PROCESSION . I. L. R. 40 Calc. 470

**COMMITMENT TO SESSIONS.**

*See* JURISDICTION OF CRIMINAL COURT.
I. L. R. 40 Calc. 360

**COMMITTEE.**

*See* PARTIES—RELIGIOUS ENDOWMENT
I. L. R. 40 Calc. 323

**COMMON MANAGER.**

*See* ACCOUNT, SUIT FOR.
I. L. R. 40 Calc. 108

——— *Bengal Tenancy Act (VIII of 1885), ss 95—98—Suit against a Common Manager for general accounts, after accounts passed by the District Judge, whether maintainable—Position of a Common Manager.* A Common Manager, appointed under s. 95 of the Bengal Tenancy Act by the District Judge, is an officer of the Court created by the statute, and in so far he holds his office and performs his duties under the provisions of the Act, is in a position analogous to that of a Receiver appointed by the Court, and is entitled to the same protection, for the period during which he exercises his duties within the powers given to him by the Act, as a Receiver appointed by the Civil Court No suit by a co-owner to render a general account for the whole period of his management could lie against a Common Manager who has, in accordance with the provisions of the law which defines his duties, regularly submitted accounts for the period of his management to the District Judge and which accounts have been duly audited and passed by the District Judge. A suit is also not maintainable by a co-owner against a Common Manager for recovery of specific sums of money, which in the ordinary course of the management ought to have appeared in the account and which the co-owner was aware at the time, were not included in the account, or with due enquiry might have discovered were not included in the account, except with the previous sanction of the District Judge. *Khitish Chandra Acharjya Chowdhury* v. *Osmond Beeby, I. L. R 39 Calc 587 ; 16 C.W. N. 516*, and *Mahomed Faiz Chowdhury* v. *Upendra Lal Singh Roy, 2 Ind. Cas. 597*, distinguished. NABA KISHORE MANDAL *v.* ATUL CHANDRA CHATTERJI. (1912)
I. L. R. 40 Calc. 150

**COMPANIES ACT (VI OF 1882)**

——— **ss. 6, 40 and 41**—*Certificate of Incorporation of Company, effect of—Objection to formation of Company, the Memorandum of Association not being signed by seven persons as required—Matter in issue not made ground of attack in former suit—Res judicata—Civil Procedure Code, 1882, s. 13.* The provisions of the Indian Companies Act (VI of 1882) as regards the incorporation of Companies are the same as those contained in the Imperial Act of 1862, except that it is specially provided in s. 40 of the Indian Act that it is not the duty

**COMPANIES ACT (VI OF 1882)**—*contd.*

——— **s. 6**—*concld.*

of the Registrar to require evidence as to whether the subscribers to the Memorandum of Association are competent to contract. S. 6 of the Act provides that " any seven or more persons . . . . . may, by subscribing their names to a Memorandum of Association and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated Company, etc." And s. 41 enacts that " a certificate of the incorporation of any Company given by the Registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with." The Memorandum of Association of a proposed Company was signed before the Registrar by two adult persons, and also by a person who under the Guardians and Wards Act (VIII of 1890), had been duly appointed by the Court guardian of five minors, the guardian making a separate signature for each minor ; and the Registrar issued a certificate of the due incorporation of the Company. In a suit in which it was objected, *inter alia*, that the Company was not properly constituted, the Memorandum of Association not having been signed by the required number of seven subscribers : *Held* (reversing the decision of the Chief Court of Lower Burma on its Appellate Side), that assuming the conditions of registration were not duly complied with, the certificate of incorporation was conclusive for all purposes, and the Court could not go behind it and consider any alleged defects in the formation or constitution of the Company. *In re Barned's Banking Company. Peel's Case, L. R. 2 Ch. App. 674, per* Lord Cairns L. J. ; and *Oakes* v *Turquand, L.R. 2 E. & Ir. App. 325, per* Lord Chelmsford L.C., followed But apart from the English decisions, the use of the word " otherwise " in s. 6 of Act VI of 1882 showed that the statutory condition that the Memorandum of Association must be signed by seven or more persons was as much a condition of registration as any other to be found in the Act which was preliminary to registration and apparently essential : *Held*, also, that the issue as to the invalidity of the Company might and ought to have been made a ground of attack in a former suit brought by the same plaintiff against the same defendants in 1902 which had been dismissed. All the facts on which the present suit was based were known to the plaintiff, and were stated at length in the proceedings in the former suit. No further evidence would have been needed. Nothing was wanting but the addition of an issue on the point The present suit as regards that question was therefore barred as *res judicata* under s. 13, Explanation 2, of the Civil Procedure Code, 1882. *Kameswar Pershad* v. *Rajkumari Ruttan Koer, I. L. R. 20 Calc. 79 ; L. R. 19 I. A. 234*, followed. MOOSA GOOLAM ARIFF *v.* EBRAHIM GOOLAM ARIFF (1912)
I. L. R. 40 Calc. 1

——— **s. 74**—*Penalty—Criminal Procedure Code, s. 260—Summary jurisdiction—Power to try*

**COMPANIES ACT (VI OF 1882)**—*concld.*

——— s. 74—*concld.*

*summarily offences under the Indian Companies Act.* There is nothing in law to prevent a Magistrate from trying summarily offences under the Indian Companies Act, 1882. *Held*, also, that the penalty provided by s. 74 of the Indian Companies Act. 1882, is a fixed and not a maximum penalty. *Queen-Empress* v. *Moore*, *I L. R. 20 Calc. 696*, referred to. EMPEROR *v.* DINA NATH (1913) . . . **I. L. R. 35 All. 173**

——— s. 169—*Company—Winding up—Appeal—Limitation—Notice.* The provisions of s. 169 of the Indian Companies Act, 1882, as to service of notice of appeal are imperative, and if the requisite notice has not been served within three weeks from the date of the order complained of and the time for service has not been extended by the Appellate Court, the appeal cannot be heard. G. J. BOWER *v* IMPERIAL BANK, LIMITED (1913) . **I. L. R. 35 All. 177**

**COMPANY**

——— formation of.

*See* COMPANIES ACT, 1882, ss 6, 40, 41. **I. L. R. 40 Calc. 1**

——— *Winding up—Shares applied for subject to a condition, and partly paid for—Condition not fulfilled—Resolution of company to refund part payment—Position of applicant as regards winding up proceedings.* A company started in Meerut in 1904, with objects of a very general nature, proposed in 1906 to erect a mill at Fyzabad, and accordingly issued a prospectus and invited the public to subscribe the necessary capital. On the faith of this prospectus one *M* applied for shares, but added to his application a condition to the following effect :—"These shares are only subscribed on the condition that any mill is started in the suburbs of Fyzabad." The company, however, found that they could not raise the necessary funds to start a mill at Fyzabad, and therefore passed a resolution that the money already subscribed for that purpose should be refunded. But before this was done the company went into liquidation. *Held*, that *M* was in the circumstances not a member of the company, but a creditor and entitled to get back what he had already paid. MAHENDRA GOPAL MUKERJI *v.* LACHMAN PRASAD (1913) **I. L. R. 35 All. 538**

**COMPENSATION.**

*See* COMPENSATION-MONEY.

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 250. **I. L. R. 37 Bom. 376**

*See* LAND ACQUISITION. **I. L. R. 40 Calc. 64**

*See* LAND ACQUISITION ACT (I OF 1894), ss. 3 (*b*), 11 AND 31 (*1*) AND (*2*). **I. L. R. 37 Bom. 76**

*See* LAND ACQUISITION ACT (I OF 1894), s. 30 . . **I. L. R. 35 All. 9**

**COMPENSATION**—*concld*

——— apportionment of.

*See* LAND ACQUISITION ACT (I OF 1894). **I. L. R. 36 Mad. 395**

——— for improvements.

*See* HINDU WIDOW. **I. L. R. 40 Calc 555**

——— principles of apportionment of.

*See* LAND ACQUISITION ACT (I OF 1894) **I. L. R. 36 Mad. 395**

——— right to.

*See* MALABAR TENANTS' IMPROVEMENTS ACT (MAD ACT I OF 1900). **I. L. R. 36 Mad. 410**

**COMPENSATION MONEY.**

——— withdrawal of.

*See* SHEBAIT . **I. L. R. 40 Calc. 895**

**COMPLAINANT.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss 248, 258, 345. **I. L. R. 37 Bom. 369**

**COMPLAINT.**

*See* COLLECTOR . **I. L. R. 40 Calc. 465**

*See* CRIMINAL PROCEDURE CODE, ss 203, 437 . . **I. L. R. 35 All. 78**

*See* JURISDICTION OF CRIMINAL COURT. **I. L. R. 40 Calc. 360**

*See* PENAL CODE (ACT XLV OF 1860), ss. 182, 193 . **I. L. R. 35 All. 102**

——— dismissal of.

*See* CRIMINAL REVISION. **I L. R. 40 Calc. 41**

——— *Jurisdiction to direct a prosecution in the absence of any judicial proceeding—Order not made independently, but on the suggestion of the District Magistrate—Complaint—Preliminary inquiry without the existence of reasons for doubting its truth—Omission to record reasons—Permission given to accused to cross-examine and adduce defence evidence—Penal Code (Act XLV of 1860), s. 211—Criminal Procedure Code (Act V of 1898), ss. 202 and 476—Practice* Where the petitioner's case was disposed of by the acquittal of the accused, on the 1st August, by a Magistrate who did not then take action under s. 476 of the Criminal Procedure Code, but proceedings thereunder were taken, on the 9th August, and an order made, on the 23rd, by another Magistrate, who had then no seisin of the case, and the District Magistrate having expressed a doubt as to the jurisdiction of the latter and having considered that such order should be passed by the Magistrate who tried the original case, such Magistrate thereupon, purporting to act under s. 476, directed the prosecution of the petitioner, under s 211 of the Penal Code, on the 16th September: *Held*,

**COMPLAINT**—*concld.*

(i) that the order of the 23rd August was without jurisdiction, as there was no judicial proceeding of any kind before the Magistrate who passed it; (ii) that the order of the 16th September was bad in law, as the trying Magistrate had not considered it necessary to take action under s 476, when he acquitted the accused in the original case, and did not exercise an independent judicial opinion in passing it a month-and-a-half later at the instance of the District Magistrate There may be cases in which a Court does not think it necessary in the public interest to take action under s. 476 of the Code, and allows the injured person to seek redress by granting sanction, and in such a case it is not necessary that the order should be passed at or near the time of the disposal of the original case When a complainant prefers a complaint and supports it by his oath, he is entitled to be believed, unless there is some apparent reason for disbelieving him, and he is entitled to have the persons complained against brought to trial. When there is no reason whatever for disbelieving the truth of the complaint, the Magistrate has no jurisdiction to act under s. 220. The accused should not be made a party to a proceeding under s. 202, nor allowed to cross-examine the prosecution witnesses or to adduce evidence for the defence: *Baidya Nath Singh* v. *Muspratt, I. L. R. 14 Calc. 141*, approved *Emperor* v *Tanuk Lal Chowdhuri* (unreported), disapproved. BHIM LAL SAH v. EMPEROR (1912) **I. L. R. 40. Calc. 444**

**COMPROMISE.**

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), S 462
**I. L. R. 36 Mad. 295**

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (BOM. XVII OF 1879), s. 15B.
**I. L. R. 37 Bom 614**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 35 All. 428**

*See* HINDU LAW—WIDOW.
**I L. R. 35 All. 240**

*See* SALE . . **I. L R. 35 All. 168**

——— forbidden by law.

*See* AGREEMENT AGAINST PUBLIC POLICY.
**I. L. R. 40 Calc. 113**

**COMPROMISE DECREE.**

*See* REVIEW, APPLICATION FOR.
**I. L. R. 40 Calc. 541**

**COMPULSION.**

——— money paid under.

*See* VOLUNTARY PAYMENT.
**I. L. R. 40 Calc. 598**

**CONCURRENT SENTENCES.**

*See* APPEAL . . **I L. R. 40 Calc. 631**

**CONDITIONAL ADOPTION.**

*See* HINDU LAW—ADOPTION
**I. L R. 37 Bom. 251**

**CONFESSION.**

*See* EVIDENCE ACT (I OF 1872), S. 91.
**I. L. R. 35 All. 260**

——— *Record of confession—Questioning the accused regarding its voluntariness at the end of the statement—Criminal Procedure Code (Act V of 1898), s. 164—Confession partly false, evidentiary value of.* Where an enquiry as to the voluntary character of the confession is made by the Magistrate not at the commencement, but at the end of the statement by the accused, the defect is merely one of form. If a confession is found to be false in part, *viz.*, as to the justifying motives for an offence, it does not follow that the rest of it, relating to the commission of the offence, must be rejected. Where the entire statement of a prisoner has been given in evidence any part of it may be contradicted by the prosecution, and if sufficient grounds exist, the Court may accept the incriminatory, and reject the exculpatory, portions. *Rex* v. *Higgins, 3 C. & P. 603*, *Rex* v. *Clewes, 4 C. & P. 221*; *Rex* v. *Steptoe, 4 C. & P. 397*, referred to PULIN TANTI *v.* EMPEROR (1913). **I. L. R. 40 Calc. 873**

**CONSEQUENTIAL RELIEF.**

*See* COURT-FEE
**I. L. R. 40 Calc. 245, 615**

**CONSIDERATION.**

*See* EVIDENCE ACT (I OF 1872), S. 92.
**I. L. R. 35 All. 558**

——— failure of.

*See* LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 97, 62 . **I. L. R. 37 Bom. 538**

**CONSPIRACY TO PROSECUTE MALICIOUSLY.**

——— suit for.

*See* LIMITATION . **I. L. R. 40 Calc. 898**

**CONSTRUCTION OF AGREEMENT.**

*See* MAHA-BRAHMAN.
**I. L. R. 35 All. 412**

**CONSTRUCTION OF DOCUMENT.**

*See* HINDU LAW—PARTITION.
**I. L. R. 35 All. 337**

*See* WILL . . **I. L. R. 35 All. 211**

**CONSTRUCTION OF STATUTES.**

*See* DEFAMATION . **I. L. R. 40 Calc. 433**

*See* STATUTE, CONSTRUCTION OF.

——— Where a later Act of Legislature does not purport or affect to supersede an earlier Act, the Court will endeavour to read the two enactments together and to avoid conflict, if possible. RANGACHARYA *v.* DASACHARYA (1912)
**I. L. R. 37 Bom. 231**

**CONSTRUCTION OF WILL.**

*See* HINDU LAW—ADOPTION.
**I L. R. 37 Bom. 107**

**CONSTRUCTION OF WILL**—*concld.*

*See* NAIKINS . I. L. R. 37 Bom. 116

*See* SUCCESSION ACT (X OF 1865) . I. L. R. 37 Bom. 644

## CONTEMPT OF COURT.

——— *High Courts in India made Courts of Record by Charter, jurisdiction of, to commit for criminal contempt of inferior Magistrate's Court in Mofussil—Common law and inherited powers of Calcutta High Court—Powers inherited by Calcutta High Court from the Supreme Court, the Sudder Dewani and Sudder Nizamat Adawlats—Original Side and its jurisdiction—Calcutta High Court, if possessed power of English King's Bench, as custos morum or guardian and protector of justice throughout the Kingdom—Power as Court of Record and one having superintendence over other Courts, limits of their power—Contempts not in the face of the Court, how punishable—Appellate jurisdiction, contempt of, deterring witnesses from deposing before Magistrate, if contempt of High Court—Pleadings—Criminal contempt, motion for, must proceed on legal evidence—Statement on information and belief, if may be relied on in contempt proceedings—In Civil interlocutary motion, source of information to be stated—Denial when not given by person charged with criminal contempt, if admission—Admission in affidavit, if may be considered—Supplementary affidavit or evidence in course of contempt proceedings—Superintendent and Remembrancer of Legal Affairs, status of, to move for or instruct Advocate-General for commitment for contempt on Original Side—Governor in Council as party to motion for contempt of lower Criminal Court—Right of person charged with contempt to know who is moving—Costs—Civil and Criminal contempt—Summary proceeding in contempt, drawbacks of, to be sparingly resorted to—Contempt proceedings, to be taken with the greatest caution—Taken only when interferes with course of justice, and not contingent or too remote—Where no real prejudice primâ facie tendency of language or reprehensible or objectionable writing, if enough—Commenting on the conduct or method of investigation by Police, if contempt of Court—Criminal Investigation Department, making imputations against, pending trial, if contempt—"Positive evidence," meaning of—Leave to move upon conditions, not fulfilled—Motion, petition of, and party moving, amendment of, when allowable—Indian High Courts Act, 24 & 25 Vict., c. 104, ss. 1, 3, 9, 15—Letters Patent, 1862, cls. 1, 26 and 27, Letters Patent, 1865, cls. 27 and 28—Supreme Court Charter of 1774, cls 2, 5, and 21—53 Geo. III, c. 155—Sudder Dewani Adawlat, 21 Geo. III, c. 70, s. 21—Sudder Nizamat Adawlat—Reg. IX (Bengal) of 1793—Reg. II (Beng.) of 1901, s. 2—Act XXX of 1841—Indian Penal Code (Act XLV of 1860) if repeals all penal laws pre-existing.* Neither the Supreme Court nor the Sudder Dewani Adawlat nor the Sudder Nizamat Adawlat had jurisdiction to commit a person for contempt of a Criminal Court in the mofussil. The Calcutta High Court, which has inherited all jurisdictions and every power and authority in any manner

**CONTEMPT OF COURT**—*contd.*

vested in the Supreme Court, the Sudder Dewani Adawlat and the Sudder Nizamat Adawlat, has not derived any such jurisdiction from any of those Courts. Upon a true reading of the judgment in *Rex* v. *Davies*, *[1906] 1 K B. 32*, the jurisdiction to commit for contempt of an inferior Court by summary proceeding which the King's Bench Division of the High Court in England assumed in that case, has been inherited by it from the old King's Bench and not from the other Courts of Record which became amalgamated in the English High Court. That jurisdiction rested on the special power of that Court to correct and protect against extra-judicial error and to punish every kind of misdemeanour, on a summary proceeding as well as an indictment or information, as the *custos morum* or the guardian and protector of public justice throughout the Kingdom, a dignity that reverted to it or was revived on the abolition of the Star-Chamber. The Common Law powers as *custos morum* never belonged to the Supreme Court of Calcutta, at least in regard to contempts of inferior Courts outside the Presidency Town, and the Calcutta High Court cannot lay claim to this power by inheritance or by reason of its having been constituted by Charter a Court of Record or by reason of its power of superintendence over the Courts of mofussil Magistrates Under 13 Geo. III, c. 63, and the Charter of the Supreme Court of 1774 thereunder, and subsequent legislation, the criminal jurisdiction of the Supreme Court of Calcutta (apart from crimes maritime), was limited to the local limits of that Court except as to British subjects. and that Court had no general power over mofussil Criminal Courts. The Common Law was similarly limited in its application to the Presidency Town and to British subjects outside its local limits The Supreme Court possessed no statutory jurisdiction over the mofussil Magistrates or other Courts of the East India Company except as provided in 53, Geo. III, c 155, s III, and as regards contempts except in relation to such as were committed on the face of such Magistrates or Courts as provided in Act XXX of 1841 and not proceeded against in such Courts. The Sudder Nizamat Adawlat was neither a Court of Record nor a King's Court The High Court, however, has in all its jurisdictions, as a Court of Record, power to commit for any contempt of itself in relation to any of those jurisdictions; and the Court on its Original Crown Side would have power so to punish any interference with the due administration of justice by a Division Bench in relation to a criminal appeal pending before it amounting to an offence under the Common Law and might possibly have such power even before any appeal was pending, as for instance, where it was shown that witnesses were being deterred from giving evidence or the jury were likely to be prejudiced *Surendra Nath Banerjee* v. *The Chief Justice and Judges of the High Court of Bengal, I. L. R. 10 Calc 109*, considered. *In re Abdool, 8 W. R. 32.* What may be a contempt of an inferior Court is not necessarily a contempt of the High Court. No person can be punished

**CONTEMPT OF COURT**—*contd.*

for criminal contempt unless the offence be proved by legal evidence. A statement made on information and belief is not legal evidence upon which a person may be committed for criminal contempt. A party charged with criminal contempt need not deny that which is not legally proved against him. *The Queen* v. *Stranger, L R. 6 Q. B. 352; 40 L. J.-Q. B. 91.* The absence of denial by such person cannot be taken to amount to an admission. But an admission in his affidavit in answer to a motion for committal for contempt can be taken into consideration by the Court. The power to commit for contempt by summary proceeding being an arbitrary, unlimited and uncontrolled power, should be restored to sparingly and with the greatest caution. It is not enough for its exercise that there should be a technical contempt of Court. It must be shown that it was probable that the publication would substantially interfere with the administration of justice. Notwithstanding the *primâ facie* tendency of the language where it appears that there was in fact no prejudice to any trial or the prejudice was contingent or too remote, the Court would not take summary proceedings in contempt. The fact that any writing is reprehensible or otherwise objectionable does not necessarily make it cognizable for contempt of Court: *Held*, that the articles in question in the present case did not constitute contempt of any Court. The "Superintendent and Remembrancer of Legal Affairs and *ex officio* Public Prosecutor, Bengal," cannot move or instruct counsel to move the High Court in the exercise of its Common Law jurisdiction, on its Original or Crown Side The proper person to move the Court for contempt in the present case was the Governor-in-Council. The condition on which leave to serve a notice of motion is given must be complied with; otherwise the application would be liable to dismissal. *Per* JENKINS, *C J. Quære:* Whether contempt of inferior Courts committed out of Court should not be left to be punished by the general law by indictment or otherwise and not by summary procedure. JENKINS, *C. J.* "Positive evidence" means evidence which goes expressly to the very point in question; and that which, if believed, proves the point without aid from inference or reasoning, as the testimony of an eye-witness to an occurrence as distinguished from indirect or circumstantial evidence. MOOKERJEE, *J.*—"Positive evidence" means direct evidence as distinguished from circumstantial evidence. JENKINS, *C. J.*—Where the articles impugned expressed distrust of the police and deprecated its mode of searches, arrests and treatment of prisoners but said nothing which would deter witnesses from giving evidence, they cannot be said to have constituted contempt of any Court. MOOKERJEE, *J.* The Criminal Investigation Department, by reason of having investigated an offence under inquiry or trial, does not become the prosecutor thereof, and an imputation that the investigation has been carried on in an objectionable manner does not constitute a contempt of Court. MOOKERJEE *J.*

**CONTEMPT OF COURT**—*concld.*

It is a matter of vital importance for the party, against whom an order for commitment for contempt is sought, to know the person or persons at whose instance the application is made. If the application is refused, he is entitled to know who is responsible for his costs. If the application is successful, he is entitled to know who is the respondent in a possible appeal by him. The motion for commitment for contempt having failed, costs were awarded to the respondent to be assessed as between party and party as on a hearing on the Original Side. *In the matter of the* AMRITA BAZAR PATRIKA (1913) . **17 C. W. N. 1253**

**CONTINGENT BEQUEST.**

*See* HINDU LAW—WILL.
**I. L. R. 40 Calc. 274**

**CONTRACT.**

*See* ABWAB . **I. L. R. 40 Calc. 806**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 37 Bom. 340**

*See* MASTER AND SERVANT.
**I. L. R. 35 All. 132**

*See* WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).

——— **made before 1886.**

*See* MALABAR TENANTS' IMPROVEMENTS ACT (MAD. ACT I OF 1900).
**I. L. R. 36 Mad. 410**

——— **recision of.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 95 . **I. L. R. 37 Bom. 158**

——— *Sale—Goods sent to purchaser not in accordance with terms of contract—Purchaser not bound to return goods to vendor.* When goods sent to a purchaser, professedly in execution of a contract of sale, are not of the kind which the vendor had agreed to supply, it is not the duty of the purchaser to see that such goods are returned to the vendor: it is enough if he gives notice to the vendor that the goods are lying at the place to which they were sent at the vendor's risk. *Grimoldby* v. *Wells, L. R. 10 C. P. 391*, followed. PHAGGU MAL *v.* BABU LAL, (1913). **I. L. R. 35 All. 325**

**CONTRACT ACT (IX OF 1872).**

——— **s. 2** (*i*)—There is nothing in the Contract Act (IX of 1872) to show an intention that a person not a party to the contract can sue on it. SHANKAR VISHVANATH *v.* UMABAI (1913) . . . **I. L. R. 37 Bom. 471**

——— **s. 11**—*Minor—Sale—Minor vendee subsequently dispossessed by third party—Right of vendee to recover purchase-money from vendor.* Where certain zamindari property was sold to persons who were minors at the time of sale, and the purchasers were subsequently ousted on suit by third parties, it was *held* that the purchasers were at any rate entitled to recover from

**CONTRACT ACT (IX OF 1872)**—*contd.*

——— **s. 11**—*concld.*

the vendors the sum which they had paid as purchase-money. *Mir Sarwarjan* v. *Fakhr-ud-din Mahomed Chowhdun, L. R. 39 I. A. 1, I L R. 39 Calc. 232,* and *Mohori Bibee* v. *Dharmodas Ghose, I. L. R. 30 Calc. 539,* distinguished. WALIDAD KHAN *v.* JANAK SINGH (1913)
**I. L. R. 35 All. 370**

——— **ss. 15, 69, 70, 72,** illus. (*b*)

*See* VOLUNTARY PAYMENT.
**I. L. R. 40 Calc. 598**

——— **s. 16 (as amended by Act IV of 1899)**—*Interest, grounds for reduction of—Undue influence.* It is not open to a Court to reduce the rate of interest in a promissory note unless the stipulation as to interest was obtained by the exercise of undue influence as defined in s. 16, Indian Contract Act (Act IX of 1872). *Balkishan Das* v *Madan Lal, I. L. R. 29 All 303,* dissented from. *Dhanpal Das* v. *Raja Maneshar Bakhsh Shing, 33 I. A. 118,* followed. *Per* THE CHIEF JUSTICE, —It was not open to the District Judge on general equitable grounds to interfere with the contract between the parties unless he was satisfied that the contract was brought about by the exercise of undue influence. *Per* SANKARAN NAIR, *J* — Excessive interest in itself may be evidence of the fact that the debtor must have been in a very helpless condition to accept the terms imposed by the creditors. KESAVULU NAIDU *v.* ARITHULAI AMMAL (1913) . . **I. L. R. 36 Mad. 533**

——— **s. 23.**

*See* AGREEMENT AGAINST PUBLIC POLICY.
**I. L. R. 40 Calc. 113**

——— **s. 25**—*Public policy—Agreement for future separation between husband and wife—Mahomedan law—Agreements void.* An agreement for future separation arrived at between husband and wife (who are Mahomedans) is void as being against public policy under s. 25 of the Indian Contract Act (IX of 1872). *Meherally* v. *Sakerkhanoobai, I. L. R. 7 Bom. L R. 602,* followed. BAI FATMA *v.* ALIMAHOMED AIYEB (1912).
**I. L. R. 37 Bom. 280**

——— **s. 62**—*Sale deed, registered—Stipulation by vendee for benefit of vendor's creditor, if enforcible by latter—Creditor informed of arrangement by purchaser and purchaser acknowledged as debtor—Purchaser if trustee—Novation—Limitation Act (IX of 1908), Sch. I, Art. 116—Consideration, definition of, in Contract Act and in English law—Justice, equity and good conscience, rule of, Courts in India to be guided by.* Where a sum is payable by *A. B.* for the benefit of *C. D., C. D.* can claim under the contract as if it had been made with himself. Defendants Nos. 1 to 4 had executed a bond in favour of the plaintiff-defendants Nos 1 to 4 on 18th August 1903, sold all their properties to defendant No. 5 by a registered deed which provided that a part of the consideration money was to remain with defendant No. 5 for payment

**CONTRACT ACT (IX OF 1872)**—*contd.*

——— **s. 62**—*concld*

of the debt of the plaintiff. The same day this arrangement was communicated to plaintiff by defendant No. 5 whom plaintiff accepted as his debtor On the 25th of January 1908, plaintiff brought a suit against the defendants for recovery of the money · *Held,* that there was no novation of contract within the meaning of s. 62 of the Contract Act. That plaintiff was entitled to sue and recover from defendant No 5 on the registered deed of sale although he was not a party to the contract, and the suit was not barred by limitation *Tweedle* v. *Atkinson, 1 B. & S. 393,* commented on and held to be no authority in India. *Muhammad Khan* v. *Husaini Begum. I L. R. 32 All. 410, 14 C. W. N 865, Gregory* v. *Williams, 3 Merivale 582, Touche* v. *Metropolitan Railway Warehousing Co., L. R. 6 Ch App. 677, Gandy* v. *Gandy, 30 Ch D. 57,* referred to and followed. Consideration as defined in the Indian Contract Act is wider than the requirements of the English law. In India the Courts are to be guided in matters of procedure by the rule of justice, equity and good conscience. DEBNARAIN DUTT *v.* RAMSADHAN MONDAL (1913) . **17 C. W. N. 1143**

——— **s. 63**—*Time extension of, if creates new contract—Delivery after expiry of extended time, acceptance of, if amounts to new contract—Contract varied by introduction of fresh terms, effect of—Plaint. statements in, when merely descriptive.* By mere extension of time for delivery of goods, a contract is not wiped out and no new contract arises ; only the promisee gets certain rights under s. 63 of the Contract Act. But in a case where subsequent to the contract a new term was introduced for the inspection of goods by the defendants in the plaintiff's godowns before delivery and after the time for delivery had long expired the defendants took delivery of 375 bales of jute, the original contract being for much more and there being nothing to show what was the new agreement or arrangement under which such delivery was taken : *Held,* that the old contract had been superseded and the defendant could not rely on the arbitration clause in the old contract and compel the plaintiff to submit the matter to arbitration in terms of such contract, and a suit would lie for the recovery of the price of the goods so delivered. LUCHMI NARAIN BHAIRADAN *v.* HOARE MILLER & Co (1913) . **17 C. W. N 1098**

——— **s. 74**—*Penalty—No interest originally, but exorbitant interest on default—Court's power to curtail exorbitant interest even then and award reasonable compensation. Held* by the Full Bench: Even when no interest is payable until default but interest at an exorbitant rate is payable as from the date of default, the Court has power under s. 74 of the Contract Act as amended (Act IX of 1872) to treat the latter stipulation as a penalty and award reasonable compensation in lieu of such excessive interest. The English and Indian decisions as well as the statutory law including the Usury Laws Repeal Act (XXVIII of 1855) prior to the amendment of s. 74 reviewed. *Per* SUNDARA

**CONTRACT ACT (IX OF 1872)**—*concld.*

——— **s. 74**—*concld.*

AYYAR, *J*—The principle underlying the Court's interference with the contract between the parties as to a payment to be made by way of damages is this:—The doctrine that the Court will carry out all contracts between parties is confined to the carrying out of the primary contract and does not extend to a secondary or subsidiary contract to come into operation if the primary contract is broken. In bonds securing payment of money, the contract regarded as primary is the promise to pay the amount due to the creditor with interest, if any, agreed upon. Any further contract, to be binding on the promiser if he breaks this contract is regarded as a secondary one intended to secure the fulfilment of the primary contract, and the Courts both in England and in India do not feel bound to carry out such a secondary contract apart from its justice and reasonableness. MUTHUKRISHNA IYER *v.* SANKARALINGAM PILLAI (1913) . . . **I. L. R. 36 Mad. 229**

——— **ss. 135—139**—*Surety when is discharged.* Mere forbearance on the part of the creditor in the absence of his doing or omitting to do anything whereby the surety's eventual remedy against the principal debtor is impaired, would not discharge a surety. The surety was not discharged when the creditor merely gave the debtor time to pay up without entering into a binding contract with that object. BAHADUR SING *v* BASUNTA KUMAR ROY (1913) . . **17 C. W. N. 695**

——— **ss. 151, 152 and 161—**

*See* RAILWAY . **I. L. R. 37 Bom. 1**

——— **s. 178—**

*See* BAILMENT . **I. L. R. 37 Bom. 122**

——— **s. 247—**

*See* SALE OF GOODS.
**I. L. R. 40 Calc. 523**

**CONTRIBUTORY NEGLIGENCE.**

——— *Position of passengers in railway trains who allow a part of their person to project outside the railway carriage.* The plaintiff, while a passenger on a train of the defendants, was travelling with his arm projecting from the railway carriage-window While the train in which the plaintiff was travelling, was passing through a station of the defendants, it passed another train of the defendants which was stationary on the parallel set of rails. A door of one of the carriages forming the stationary train, being the eighth carriage to be passed by the train in motion, having been left insecurely fastened owing to the negligence of the defendants' servants, swung open and, striking the arm of the plaintiff which was projecting from the carriage-window, fractured it. *Held*, that under the circumstances the plaintiff was guilty of contributory negligence and was not entitled to recover damages from the defendants *Held*, however, that the *dicta* in the case of *Dullabhji Sakhidas* v. *G. I. P. Railway Co.*,

**CONTRIBUTORY NEGLIGENCE**—*concld.*

*I. L. R. 34 Bom. 427*, that (i) a passenger must travel inside and not outside his compartment and, therefore, if he travels outside, he does so entirely at his own risk and the company cannot be held liable for any injury he suffers in consequence; (ii) that a passenger who gets injured owing to putting any part of his person outside his carriage is guilty of contributory negligence cannot be followed as rigid and inflexible rules of law. JEHANGIR MUNCHERJI *v* B B. & C I. RAILWAY Co. (1912) . . **I. L. R. 37 Bom. 575**

**CONVERSION.**

*See* BAILMENT . **I. L. R. 37 Bom. 122**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 40 Calc. 407**

**CO-OWNERS.**

——— *Fiduciary relation between co-tenants, conditions giving rise to—Revenue sale—Default by one co-owner—Purchase by that co-owner—Effect on other co-owners—Suit for recovery of possession by other co-owners—Public policy in India, rule of English law, if a safe guide to.* The plaintiff sued to recover possession of her share in certain properties which had been sold away for arrears of revenue or rent, alleging that the defendant No. 1 who was her brother managed the whole estate on behalf of all the co-sharers and that she was in possession jointly with him by receiving her share of the rents and profits, that after she had fallen out with defendant No. 1 the latter did not pay her share of the rents and profits nor give up her share of the properties and in order to deprive her of her share caused the properties to be sold for arrears of revenue and himself purchased the same with his own money in the names of the other defendants: *Held*, that where a revenue sale is caused by the default of a co-owner and the property is afterwards purchased at that revenue sale by that co-owner, there may be such relations between the defaulter and his co-owner as would make it right for the Court to treat such a sale as made for the benefit of both. The relations which exist between co-tenants in England and the consequences of those relations are very different from those which obtain in this country, and English cases like *Biss* v. *Biss*, *[1903] 2 Ch 40, 57*; *Kennedy* v *De Trafford*, *[1897] A. C. 180*, would hardly be safe guides to follow here. *Doonga Singh* v *Sheo Pershad Singh*, *I L. R. 16 Calc 194*, commented on. FAIZAR RAHMAN *v.* MAIMUNA KHATUN (1913) **17 C. W. N. 1233**

**CO-PARCENER.**

*See* COPARCENERSHIP.

*See* LIMITATION ACT (XV OF 1877), SCH. II, ART. 127 . **I. L. R. 37 Bom. 64**

——— **alienation by.**

*See* LIMITATION ACT (XV OF 1877), SCH. II, ARTS. 127, 142 **I. L. R. 37 Bom. 84**

**COPARCENERSHIP.**

*See* HINDU LAW—JOINT FAMILY. I. L. R. 40 Calc. 407

**CO-RESPONDENT.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 22 I. L. R. 37 Bom. 511

**CO-SHARERS.**

*See* DISPUTE CONCERNING LAND. I. L. R. 40 Calc. 982

*See* EXPROPRIETARY TENANT. I. L. R. 35 All. 27

**COSTS.**

*See* ARBITRATION I. L. R. 40 Calc. 219

*See* ATTORNEY AND CLIENT I. L. R. 40 Calc. 386

*See* CIVIL PROCEDURE CODE 1908, O. XXXIV, R 14. I. L. R. 35 All. 518

*See* PRIVY COUNCIL. I. L. R. 36 Mad. 501

*See* TRADE-MARK. I. L. R. 40 Calc. 814

——— apportionment of.

*See* PUNITIVE POLICE. I. L. R 40 Calc. 452

**COUNSEL.**

——— professional conduct of.

*See* LIMITATION . I. L. R. 40 Calc. 898

*See* COUNSEL AS WITNESS.

——— engaged in case, appearing as witness.

*See* LIMITATION. I. L. R. 40 Calc. 898

**COUNSEL, AS WITNESS.**

*See* BAR COUNCIL, RESOLUTIONS OF. I. L. R. 40 Calc. 898

**COUNTERFEITING TRADE-MARK.**

*See* TRADE-MARK. I L. R. 40 Calc. 281

**COURT-FEE.**

*See* ADMINISTRATION. L. R. 40 I. A. 236

*See* COURT-FEES ACT (VII OF 1870).

*See* COURT-FEES ACT (VII OF 1870), S. 7, CL. IX. . I. L. R. 35 All. 92, 94

1. ——— *Declaratory suit—Consequential relief—Injunction, prayer for—Endowment—Valuation of suit—Jurisdiction—Specific Relief Act (I of 1877), s. 42—Court-fees Act (VII of 1870), s. 7 (iv) (c)—Suits Valuation Act (VII of 1877), s. 8.* The plaintiff brought a suit for declaration that he was the sole *shebait* of the family-deity, and was entitled as such to exclusive possession of the disputed properties on behalf of the deity, and also for a declaration that the registration of the name of the principal defendant

**COURT-FEE**—*concld.*

as joint owner of the endowed properties with the plaintiff in the books of the Collector was improperly made. He valued the suit, for purposes of jurisdiction, at Rs. 11,005, and paid Rs. 10 as court-fee under Schedule II, Art 17 (*iii*) of the Court-fees Act. Subsequently, on an objection taken under s. 42 of the Specific Relief Act by the principal defendant at the hearing of the suit, a prayer was added in the plaint for an injunction prohibiting the principal defendant from interfering with the plaintiff performing his duties as *shebait* and managing the *debutter* properties, and a further *ad valorem* fee was paid by the plaintiff under Schedule I, read with s. 7 (*iv*) (*d*) of the Court-fees Act, for the injunction. The Court of first instance having heard the suit and dismissed it on the merits, the plaintiff appealed to the High Court, and upon the memorandum of appeal he paid court-fees in the same manner as in the Court of first instance: *Held*, that the prayer for injunction was arbitrarily undervalued, that its value was the value of the relief claimed, and that the plaintiff was bound to pay *ad valorem* court-fees upon the plaint and memorandum of appeal on the basis that the value of the relief claimed was Rs. 11,005. *Umatul Batul* v. *Nanji Koer*, *11 C W. N. 705*, *6 C. L. J. 427*, *Dayaram Jagjivan* v. *Gordhandas Dayaram*, *I. L. R. 31 Bom. 73*; and *Boidya Nath Adya* v. *Makhan Lal Adya*, *I. L R 17 Calc. 680*, referred to. RAJ KRISHNA DEY *v.* BIPIN BIHARI DEY (1912). I. L. R. 40 Calc. 245

2. ——— *Declaratory decree, suit for—Consequential relief—Plaint, rejection of—Civil Procedure Code (Act V of 1908), O. VII, r 11—Valuation of suit—Court-fees Act (VII of 1870), s. 7, paras. iv, cl. (c), v, cl. (a)—Valuation for purpose of jurisdiction—Suits Valuation Act (VII of 1887), s 8* In a suit for declaration that a decree amounting to Rs. 2,794 and odd should be declared forged, illusory and unfit for execution and also for a declaration that the family property valued at Rs. 7,000 was not liable to be sold in execution of that decree, the plaintiff paid court-fee ten times the Government revenue payable on the land worth Rs. 7,000. The Court below rejected the plaint:—*Held*, that the real value of the reliefs claimed was Rs. 2,794 and odd, the value of the decree, and that, the plaintiff not having paid court-fee on that amount, the plaint was rightly rejected. A plaintiff cannot value his case for the purpose of court-fee and for the purpose of jurisdiction at different amounts. HARIHAR PRASAD SINGH *v.* SHYAM LAL SINGH, (1913) . . . I. L R. 40 Calc. 615

**COURT-FEES ACT (VII OF 1870).**

——— s. 7.

*See* COURT-FEE . I L. R. 40 Calc. 615

——— s. 7, cl. (iv) (c).

*See* COURT-FEE . I. L. R. 40 Calc. 245

**COURT-FEES ACT (VII OF 1870)—** *contd.*

——— s. 7, cl. (ix)—

1 ——— *Decree on mortgage —Separate liabilities of distinct properties. Appeal in respect of distinct properties* In a suit for sale on a mortgage a decree was passed declaring the separate liabilities of the different properties mortgaged. One of the defendants whose property was held liable for specific sums of money appealed. *Held,* that the proper court-fee payable on the memorandum of appeal was a fee calculated on the sums of money for which the defendant's property was held liable and not one calculated on the full amount of the decree. CHHABRAJI KUNWAR *v.* THE COURT OF WARDS (1912).

**I. L. R. 35 All. 92**

2. ——— *Suit for sale on mortgage—Court fee payable in appeal—Value of the subject matter—Amount declared due on date fixed for payment.* A decree for sale on a mortgage declared that on the date fixed for payment a specified sum would be due from the mortgagor which included interest *pendente lite. Held,* that the court-fee payable in appeal from such decree was to be assessed, not on the amount claimed in the suit but upon the amount with interest *pendente lite* found due by the court of first instance at the date fixed for payment. BALDEO SINGH *v.* KALKA PRASAD (1912). **I L. R. 35 All. 94**

——— s. 8—*Land Acquisition Act (I of 1894), secs. 32, 54—Order directing compensation money to be deposited in securities appeal against—Court-fee—Executor, power of disposition of—Probate and Administration Act (V of 1881), s. 90.* Where the widow of a testator was granted probate of his will whereby he had made a *debutter* of certain immoveable properties. of which two having been acquired by Government, the Land Acquisition Judge passed an order under s. 32 of the Land Acquisition Act directing the compensation money to be invested in securities and allowing her as *shebait* to realise the interest only. *Held,* in an appeal by her against the order, that court-fee was payable on the memorandum of appeal under s. 8 of the Court-Fees Act, and her claim to receive the compensation in her own right being capable of valuation at least approximately she was bound to pay *ad valorem* court-fee on a value to be assessed by the taxing officer That although she claimed as executrix, she was none the less a person within the description of s. 32 of the Land Acquisition Act, the powers of an executor under s. 90, Probate and Administration Act being restricted by the provision of the will. TRINAYANI DASSI *v* KRISHNALAL DE (1912).

**17 C. W. N. 933**

——— Sch. I, Art 1; Sch. II, Art. 11.

——— *Civil Procedure Code, 1908, O. XXXIV, r 5—Court-fee—Appeal from final decree in a mortgage suit Held,* that an appeal from the final decree passed under O. XXXIV, r. 5, of the Code of Civil Procedure, 1908, requires an *ad valorem* court-fee, and cannot

**COURT FEES ACT (VII OF 1870)—** *concld.*

——— Sch. I—*concld.*

be stamped as an appeal from an order BAJRANGI LAL *v.* MAHABIR KUNWAR, (1913).

**I. L. R 35 All. 476**

——— Sch. I, Art. 11; Sch. III— *Probate and Letters of Administration, court-fees payable on—Gross or net value—Court-fee, error as to valuation, revision by High Court.* Where the gross value of the property in respect of which application has been made for probate or letters of administration exceeds Rs. 1,000, but the net value after deducting the liabilities against the estate is below that amount, Court-fee is payable under Sch. I, Art. 11 of the Court Fees Act, though it is payable on the said net value under the provisions of Art. 11 of Sch. I read with Sch. III of the Act. The exemption from liability to pay Court-fees provided by s. 19, cl. (viii) and Art. 11 of Sch. I of the Act applies only in cases where the gross value does not exceed one thousand rupees. Where the Court below decided that no Court-fee was payable, on an erroneous view of law, the High Court could interfere in revision under s. 15 of the Indian High Courts Act. THE COLLECTOR OF MALDAH *v.* NIRODE KAMANI DASSY (1912) . . . . . **17 C. W. N. 21**

**COURT-FEES AMENDMENT ACT (XI OF 1899).**

——— s. 19H, sub-s. (4).

*See* ADMINISTRATION.

**L. R. 40 I A. 236**

**COURT OF WARDS.**

*See* CENTRAL PROVINCES GOVERNMENT WARDS ACT, s. 18.

**I. L. R. 40 Calc. 784**

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), s 2.

**I. L. R. 37 Bom. 97**

**COURT OF WARDS ACT (BOM. I OF 1905).**

——— s. 3 (c)—*Bombay Civil Courts Act (XIV of 1869), s. 32—Collector—Court of Wards—Government officer—Suit against—Jurisdiction of the Subordinate Judge.* When the Collector is appointed a Court of Wards under s. 3 (c) of the Court of Wards Act (Bom. Act I of 1905), he is an officer of Government and the Subordinate Judge's Court cannot entertain a suit against him having regard to s. 32 of the Bombay Civil Courts Act (XIV of 1869) SILWA *v.* MINIZIS (1912).

**I. L. R. 37 Bom. 313**

**COURT-SALE**

*See* VATAN . **I. L R. 37 Bom. 81**

——— *Stranger purchaser, bonâ fide effecting improvements—Subsequent eviction, right to value of—Improvements.* A purchaser in a Court auction, who was not a party to the decree, is entitled to the value of the improvements *bonâ fide* effected by him, on being evicted from the property owing to some defect or irregularity in

**COURT-SALE**—*concld.*

the proceedings leading up to the sale. The time of his making the improvements is immaterial, provided he had then an honest belief in the validity of his title. *Bonâ fides* in this connection mean only honest belief in the validity of his title and does not extend to the necessity of making proper enquiries as to the title and regularity of the prior proceedings. S 51 of the Transfer of Property Act is inapplicable to a purchaser at a Court-sale *Per* CURIAM : There is a great distinction between stranger purchasers and decree-holder purchasers. The principle of *caveat emptor* has no application to a Court purchase There is no covenant for title implied in a Court-sale and the purchaser takes only the right, title and interest of the judgment-debtor *Quære* Whether *Zain-ul-Abdin Khan* v. *Muhammad Ashgar Ali Khan, I. L. R. 10 All 166,* lays down that stranger purchasers in order to be entitled to protection, should make their purchases *bonâ fide*? *Nanjappa Gounden* v. *Peruma Gounden, I L R. 32 Mad. 530, Kundarpa Nath Ghose* v. *Jogendra Nath Bose, 12 C. L. J. 391, Stock* v. *Starr, 1 Sawyer, 15, 22 (India) Fed. Cases, 1084,* and *Bright* v. *Boyd, 1 Story 478,* and *Dharma Das Kundu* v. *Amulyadhan Kundu, I. L R. 33 Calc 1119,* followed. 24 American Cyclopædia of Law and Procedure, page 70, referred to. MOITHEENSA ROWTHAN *v.* APSA BIVI (1913).

**I. L. R. 36 Mad. 194**

**COVENANT FOR TITLE.**

*See* SALE . . **I. L. R. 35 All. 163**

**CRIMINAL BREACH OF TRUST.**

*See* AGREEMENT AGAINST PUBLIC POLICY **I L. R. 40 Calc. 113**

*See* CHARGE . **I. L. R. 40 Calc. 318**

*See* CRIMINAL PROCEDURE CODE, S. 179. **I. L. R. 35 All. 29**

*See* PENAL CODE (ACT XLV OF 1860) SS 406 AND 408. **I. L. R. 35 All. 361**

**CRIMINAL CASE.**

*See* APPEAL TO PRIVY COUNCIL. **17 C. W. N. 1110**

**CRIMINAL COURT IN INDIA.**

——— verdict of, principles governing interference with.

*See* PRIVY COUNCIL. **I. L. R. 36 Mad. 501**

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)**

——— s. 4 (h)

1. ——— *Complaint Allegation made in writing to a Magistrate—with a view to his taking action—Examination of complainant before issue of process—Quashing of proceedings.* Where one N. M. wrote a letter to the Sub-Divisional Magistrate in which he stated that the petitioner had used insulting language towards him and asked the Magistrate to take action, and the Magistrate on receipt of that letter issued process against the petitioner without examining the said N. M. : *Held,* that the letter in question certainly comes within the definition of "complaint" given in s. 4, Cr. P C, and the Magistrate should have examined the complainant and then proceeded in accordance with law. KHETRO MOHAN MITRA *v.* EMPEROR (1913) . . **17 C W. N. 448**

2. ——— *Obstruction of public servant—Complaint—Sanction, want of—Quashing of proceedings.* The Petitioner was summoned under s. 186, Penal Code, for obstructing a peon in the execution of a warrant under the Cess Act. The report of the peon on which the proceedings were started was merely a report of what took place and contained no express or implied request to the Magistrate to take any action, *Held,* that the report did not come within the meaning of a complaint under s. 4, cl. (*h*), Cr. P C. *Held,* further. The report not being a complaint and there being no sanction by the public officer concerned, *viz*, the peon, the prosecution under s 186, Penal Code, was bad AHMED HUSAIN *v.* EMPEROR (1913) . **17 C. W. N. 980**

——— ss. 4, 195 (*1*)—"*Complaint*"—*Information of the supposed commission of an offence communicated by the District Judge to the District Magistrate with a view to the latter taking action as a Magistrate.* A Munsif, being of opinion that a document filed in a case before him had been tampered with, communicated his suspicions to the District Judge, who thereupon wrote to the District Magistrate, requesting him to take action in the matter. *Held* that the letter of the District Judge to the District Magistrate amounted to a complaint within the meaning of s 195 (*c*) of the Code of Criminal Procedure. *Emperor* v. *Sundar Sarup, I L R. 26 All 514,* followed. EMPEROR *v.* DEBI PRASAD, (1912) . **I. L. R. 35 All 8**

——— s. 5 (*2*), (*3*)—*Several concurrent sentences each by itself non-appealable, if appealable taken collectively* An accused, who has been sentenced to concurrent terms of imprisonment, no one of which is individually appealable, has no right of appeal against them collectively. *Abdul Khalek* v. *The King-Emperor, 17 C. W. N. 72,* not followed. *Suknandan Singh* v. *King-Emperor, 16 C. W. N.* ccixxxiv, referred to. SHABIJAN SHEIKH *v.* EMPEROR (1913)

**17 C. W. N. 825**

——— ss. 35, 408—*Appeal*—"*Aggregate sentences*"—*Concurrent sentences not aggregate.* The term "aggregate sentences" as used in sub-s. (*3*) of s. 35 of the Code of Criminal Procedure applies only to consecutive and not to concurrent sentences. Where therefore an Assistant Sessions Judge passes concurrent sentences and the whole term to be served by the convict

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)**—*contd.*

——— **s. 35**—*concld.*

does not exceed four years, the appeal under s. 408 of the Code does not lie to the High Court but to the Sessions Judge. *Sher Mohammad* v. *Emperor of India*, Punj Rec., 1901, Case 85, *Emperor* v *Tulshidas Lakshman*, *11 Bom L. R. 544*, and *Regina* v. *Gulam Abas*, *12 Bom. H. C. R. 147*, approved and followed. *Abdul Khalek* v. *King-Emperor*, *17 C W. N. 72*, dissented from. EMPEROR *v.* TULSI RAM, (1913)

**I. L. R. 35 All. 154**

——— **ss. 35 (3), 413**

*See* APPEAL . **I. L. R. 40 Calc. 631**

——— **ss 55, 56, 110**—*Arrest of suspected person—Warrant—Procedure.* S. 55 of the Code of Criminal Procedure is independent of Chapter VIII of the Code, although proceedings under that chapter may follow an arrest under s. 55 as a natural sequence An officer in charge of a police station can, therefore, arrest or cause to be arrested, without a warrant or an order of a Magistrate, any person who is by repute an habitual robber, house-breaker or thief, or otherwise comes within the scope of s. 110. EMPEROR *v.* NEPAL (1913).

**I.L. R. 35 All. 407**

——— **ss. 94, 165**—*Scope of—Search for specified article only—Article in possession of accused if can be searched for—General search for stolen property, if authorised.* Where a Sub-Inspector of Police searched the house of one S who had been charged with criminal breach of trust in respect of a sum of money, and the object of the search was to discover the money and a bag in which it was contained and in the course of the search one of the petitioners cut the Sub-Inspector with a sickle on the hand and the other knocked him down and they were convicted under ss 332, 353, Penal Code: *Held*, that the search was covered by s. 165, Cr. P C, and the convictions under ss. 332, 353 were right. That under ss. 94, 165, Cr. P. C., a search can be made for a stolen article or incriminating document or thing in the possession of an accused person but one of the safeguards which the Legislature provides against abuse is that the search must be for a specified article or thing and not a search for stolen property generally. BISSAR MISSER *v.* EMPEROR (1913) **17 C. W. N. 1209**

——— **s. 107**—*Security to keep the peace—S. 403—Autrefois acquit—S 495, withdrawal from prosecution, section inapplicable to security proceedings—No conviction or acquittal under s. 107—Ss. 112, 117, 118, 119, 253—S. 145, order under, no bar to order under s 107 on same facts.* A preliminary charge-sheet under s. 107, Criminal Procedure Code, was withdrawn by the police before the parties mentioned therein were ordered to appear The Magistrate endorsed the charge-sheet to the effect that the accused were acquitted. A fresh charge under the same section was subsequently put by the police against certain of the same persons who had been previously charge-sheeted. *Held*, that the withdrawal of the first charge-sheet was no bar to proceedings under the second. "Neither an order of discharge nor of acquittal can properly be made in a case where the accused has not been directed to appear at all." S 495, Criminal Procedure Code, is not applicable to security proceedings An order passed by a Magistrate under s. 145, Criminal Procedure Code, is no bar to the same Magistrate binding over the same parties on the same facts under s 107, Criminal Procedure Code. *In re* MUTHIA MOOPAN (1913) . **I. L. R. 36 Mad. 315**

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)**—*contd.*

——— **s. 107**—*concld.*

——— **s. 107, cl. (4), s. 496**—BAIL—*ss. 344 and 167.* S. 107, clause (4), Criminal Procedure Code, makes an exception to the general rule laid down in s. 496 which enacts that bail shall be given in all cases in which a person is not charged with a non-bailable offence. S. 107, clause (4), compared with s. 344 and 167, Criminal Procedure Code. *Re* NARAYANASAMI NAICKEN (1913) . . . . **I. L. R. 36 Mad. 474**

——— **s. 109**

*See* OSTENSIBLE MEANS OF SUBSISTENCE.

**I. L. R. 40 Calc. 702**

——— **s. 110**—"*Any person within the local limits; meaning of—Jurisdiction of Magistrate over outsiders found within local limits—Object of the section* In order to give jurisdiction to a Magistrate to proceed under s. 110, Criminal Procedure Code, it is not necessary that the person proceeded against should be 'residing' within the local limits of his jurisdiction. The meaning of the expression 'any person within the local limits' in s. 110 is 'any person who is within the local limits at the time the Magistrate takes action under the section.' *Ketabdi* v. *Queen-Empress*, *I. L R 27 Calc 993*, not followed A contrary view would defeat the object of the section, *viz*, prevention of crime, as then it would be impossible to deal under the section, with wandering gangs of criminals having no fixed residence or with habitual thieves or desperate characters belonging to foreign territories, who infest British India. *In re* RANGAN (1913) . . . **I. L. R. 36 Mad. 96**

——— **s 110**—*Proceeding, if may be quashed by High Court at initial stage—Mala fide, allegations that proceeding, police-report, if complete answer to—High Court, duty of to prevent abuse of provision of Statute—Scope and object of proceeding under s. 110—Zemindar, mismanagement and bad relations with tenants, if justifies proceeding—Revival of proceeding once dropped if proper—Proof of bad character—Criminal proceedings, terminated by compromise or ending in acquittal, if admissible—District Gazetteer, extract from, admissibility of, to prove reporting officer's attitude towards accused* MOOKERJEE, J—The object of s. 110, Cr. P. C., is preventive and not punitive, and the purpose the Legislature had in view was to afford protection

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 110—*contd.*

to the public against the repetition of crimes in which the safety of property is menaced and not the security of persons alone is jeopardised. *Nawab v Queen, I. L. R. 2 All. 835*, referred to. The preventive jurisdiction with which this Magistrate is thus vested is a powerful means to secure the interests of the community from injury at the hands of hardened offenders of the most dangerous classes. But this very fact renders it necessary that the powers should be exercised with caution and discretion The Magistrate may initiate proceedings on information derived from any source, and he is not bound to reveal the source of his information and it is sufficient if he states the substance thereof and, at the initial stage, the Crown is not bound even to name the witnesses who will support the case by their evidence. Though, therefore, *primâ facie*, a police-report would be an adequate foundation for a proceeding under s. 110, Cr. P C, it would not, in every case, be a complete answer to the allegation that the proceeding is not *bonâ fide*. Whenever it is established conclusively either by direct evidence or by evidence of surrounding circumstances, that the proceedings are not *bonâ fide* and that in substance their continuance would mean an abuse of statutory provisions on the subject, it is not only competent to the High Court but it is its obvious duty to interfere and quash proceedings even at the initial stage. *Held*, by MOOKERJEE, J. (agreeing with IMAM, J), that the provisions of the section were misapplied when the object of the proceeding was found to be to compel a landlord to adopt methods of management of his estate approved by the authorities but not assented to by him. *Per* CARNDUFF, J. (*contra*)—A police-report setting out informations fulfilling the requirements of s 110, Cr. P. C., is a sufficient ground for proceeding under s. 110, Cr. P. C., and a Magistrate cannot properly refrain from acting on it merely because the police may have over-stated their case. And as proceedings of the Magistrate ought to be presumed to be *bonâ fide* until the contrary is proved, a proceeding under s. 110, Cr. P. C, initiated by the Magistrate upon a police-report ought not to be quashed until the statements in the police-report have been tested and put to the proof. *Held* by MOOKERJEE, J. (agreeing with IMAM, J.), that extracts from the Magistrate's Administration Report appearing in the District Gazetteer and which contained reflections on the petitioner's conduct as landlord and upon which he relied to show that his treatment by the Magistrate leading up to the institution against him of proceedings under s. 110, Cr. P. C., was in harmony with the views expressed in the Administration Report were relevant and admissible in evidence. *Fanindra Deb* v. *Rajeswar Das, I. L. R. 11 Calc. 463 : L. R. 12 I. A. 72*, referred to. A judgment of acquittal fully establishes the innocence of the accused, and a criminal proceeding which ended in the acquittal of the accused

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s. 110—*concld.*

cannot be relied upon by the Crown as evidence of bad character in a subsequent proceeding under s. 110, Cr P. C., against him *King* v *Plummer, [1902] 2 K B. 339, Emperor* v. *Nani Gopal, 15 C. W. N. 593, Pulin Bihari Dass* v. *King-Emperor, 15 C. L. J. 577 : 16 C. W. N 1105*, referred to. No inference adverse to an accused ought to be drawn from criminal proceedings which terminated in compromise. RAJENDRA NARAIN SINGH *v.* EMPEROR (1912) . . **17 C. W. N. 238**

——— ss. 110, 118, 367, 424

*See* PRACTICE . **I. L. R. 40 Calc. 376**

——— ss. 112, 118—*Order to show cause, terms of, if restricts scope of enquiry—Prejudice* The enquiry provided by ss 117 and 118 of the Code of Criminal Procedure is not strictly limited by the terms of the order drawn up under s. 112 calling upon the accused to show cause why he should not execute a security bond to keep the peace or for his good behaviour, though if the person eventually bound down can show that he was misled or prejudiced by the terms of the order, he would be entitled to relief DEPUTY LEGAL REMEMBRANCER *v.* KADIR MIRZA (1912). **17 C. W. N. 331**

——— s. 125—*Security to keep the peace—Procedure—Appeal—Jurisdiction.* A District Magistrate taking action under s. 125 of the Code of Criminal Procedure cannot treat an application made under that section as an appeal and reverse the order of a first class Magistrate on the facts. If he considers the order to be wrong on the merits, he can exercise his revisional powers and submit the record to the High Court but the cancellation of bonds contemplated by s. 125 can only be on the ground that the bonds are no longer necessary BANARSI DAS *v.* PARTAB SINGH, (1912) . . . . **I. L. R. 35 All. 103**

——— s. 144—*Proceedings under.* Advisability of taking proceedings under s. 144, Cr. P. C, to prevent disturbance of peace considered. MANIK CHANDRA CHAKRAVARTI *v.* PREO NATH KUAR (1912) . . . **17 C W. N. 205**

——— s. 145

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 107.
**I. L. R. 36 Mad. 315**

——— s. 145

*See* DISPUTE CONCERNING LAND.
**I L.R. 40 Calc. 982**

1. ——— *Proceedings under —Adjournment, property of—Witnesses, processes to enforce attendance of, when may be refused.* A Magistrate, acting under s. 145 of the Criminal Procedure Code, should take all the evidence that is produced before him on the day originally fixed by him for the disposal of the proceeding, and unless he considers it necessary for good reason

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 145—*contd.*

to require further evidence, should decide then and there, if he can, which of the parties was in actual possession Where the Magistrate, on the application of one of the parties, on the date originally fixed for the disposal of the proceeding under s. 145, granted an adjournment and issued summons on witnesses named by the party, some of whom did not appear on the adjourned date and some of those present were not examined by the party calling them, and the Magistrate on the application of the party issued fresh summons and warrants for the arrest of the absent witnesses, again adjourning the hearing, and none of these witnesses appeared on the date so fixed. and the party applied for fresh adjournment and the issue of fresh processes. *Held*, that having regard to the previous conduct of the party concerned and also to the circumstance that the witnesses mentioned could not be found, the Magistrate acted rightly in refusing to issue fresh process. *Held*, further, that the Magistrate should not have granted any adjournment after the date originally fixed for the disposal of the proceeding, as in the present case, no adequate reason appears to exist for granting such adjournment. HARIPADA MANDAL *v.* SANYASI CHARAN BISWAS (1912).

**17 C W. N. 144**

2. ——— *Public claiming easement if may be party to a proceeding under the section—Declaring the public to be in possession, effect of—Joint possession—Ousting of Jurisdiction of the Magistrate—Right of the public to be in possession for one day in the year to perform puja, nature of—Easement—Constructive conditional possession—Proceeding not directed to the decision of the absolute continuing possession of either party ultra vires.* If the public are declared under s. 145, Cr. P. C, to be in possession of any piece of land then both parties to the dispute are included in that term and the possession therefore is joint possession and the jurisdiction of the Court under s. 145, Cr. P. C, is ousted. Where one of the parties to a proceeding under s 145, Cr. P C., representing the public claimed only the right to worship on the disputed land on one day in the year and the right to make due and proper preparations for the holding of that worship by erecting huts for the purpose of holding puja: *Held*, the right of such party to be in possession for one day in the year or to take such steps as are necessary to prepare for the puja is in the nature of an easement and not in the nature of possession. Proceedings under s. 145, Cr. P. C., are entirely without jurisdiction unless they are directed to the decision of the absolute continuing possession of either party until they are ousted by the order of the Civil Court. MANIK CHANDRA CHAKRAVARTI *v.* PREO NATH KUAR (1912).

**17 C. W. N. 205**

3. ——— *Disputed land—Pathways thereon—Possession of disputed land found with one party—Order directing pathways to remain*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd*

——— s. 145—*concld*

*intact and remainder of disputed land to remain in possession of successful party—Jurisdiction to make such order* Where in a proceeding under s. 145, Cr. P. C., the Magistrate found that the disputed land was in possession of the second party but directed that two pathways on the disputed land should remain intact and only the remainder of the disputed land should remain in possession of the second party· *Held*, that there is nothing in s 145, Cr. P. C., which gives a Magistrate power to pass an order of this kind ASIT MOHAN GHOSH *v.* SARAT CHANDRA GHOSH (1913).

**17 C. W N. 793**

4. ——— *Jurisdiction of High Court to deal in revision with orders passed under s. 145 —S. 439, meaning of words "otherwise comes to its knowledge"—Ss. 438, 439, compared—S. 145, Criminal Procedure Code—Defective preliminary order, effect of.* Ss 143, 144, 145 and 146, Criminal Procedure Code, deal with proceedings which are not criminal or punitive but prohibitive and where cause is shown, the local magistracy has unfettered discretion to act under them. Therefore from the use of the word "otherwise" in s 438 a power in the Sessions Judge and the District Magistrate to interfere with such orders cannot be inferred when they are expressly forbidden by s 435 to call for records. *Sequiter:* The words in s 439 "the record of which has called for by itself" are not limited to cases where the High Court acts *suo motu*. The history of the law relating to superintendence and revision by the High Court reviewed. An omission to set forth in a preliminary order under s 145, Criminal Procedure Code. the grounds of a Magistrate's opinion do not affect the jurisdiction of the Magistrate. *Khosh Mahomed Sirkar* v. *Nazir Mahomed, I L R 33 Calc. 352*, discussed, and *Subrahmania Ayyar* v. *King-Emperor, I. L. R 25 Mad. 61*, distinguished The essential requisite to give a Magistrate jurisdiction under s. 145, Criminal Procedure Code, is that he must be satisfied from information of some sort that a dispute exists likely to cause a breach of the peace concerning land or water or the boundaries thereof in his jurisdiction. Once he is so satisfied his jurisdiction is complete and his subsequent action must be considered in relation to procedure not jurisdiction KAMAL KUTTY *v.* UDAYAVARMA RAJA VALIA RAJA OF CHIRAKKAL (1913)

**I. L. R. 36 Mad. 275**

——— s. 146 (2)

*See* RECEIVER . **I L. R. 40 Calc. 862**

——— ss. 146, 148

*See* ATTACHMENT **I. L. R. 40 Calc. 105**

——— s. 154—*First information if substantive evidence.* Six persons were convicted of murder and sentenced to death. The Sessions Judge treated the first information in the case as a piece of substantive evidence. The accused appealed

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 154—*concld.*

to the High Court There was a difference of opinion between the Judges who first heard the appeal necessitating a reference to a third Judge and nearly six months elapsed before the appeal was finally disposed of. *Held, per* STEPHEN AND CARNDUFF, JJ.—The first information, although a document of great importance which is in practice always and very rightly produced and proved in criminal trials, is not a piece of substantive evidence, and it can be used only as a previous statement admissible to corroborate or contradict the author of it AUTOR SINGH *v.* EMPEROR (1913) . . . . . **17 C. W. N. 1213**

——— s. 164.

*See* CONFESSION **I. L. R. 40 Calc. 873**

——— ss. 173, 190 (*1*) (*b*).

*See* COGNIZANCE **I. L. R. 40 Calc. 854**

——— ss. 177, 531.

*See* PENAL CODE, ss. 463, 471.
**I. L. R. 36 Mad. 387**

——— s. 179—*Jurisdiction—Place where consequence of act ensued—Act No. XLV of 1860 (Indian Penal Code), s. 406—Criminal breach of trust. Held,* that the loss caused to the person beneficially entitled to property through a criminal breach of trust, is a consequence which completes the offence, and a prosecution will therefore lie at the place where such loss occurred. *Queen Empress* v. *O'Brien, I. L. R. 19 All. 111. Emperor* v. *Mahadeo, I. L. R. 32 All. 377,* followed. *Babu Lal* v. *Ghansham Das, All. W. N. (1908), 115, Ganeshi Lal* v. *Nand Kishore, I. L R. 34 All. 487,* and *Sudar Meru* v. *Jethabhai Amvbhai, 8 Bom. L. R. 513,* distinguished. *Nirbhe Ram* v. *Kallu Ram, 4 O. C. 376,* dissented from. LANGRIDGE *v.* ATKINS (1912).
**I. L. R. 35 All. 29**

——— s. 185.

1. ——— *Power of the High Court under the section to transfer case pending in Court not subject to its jurisdiction—Stay of further proceeding to enable accused to bring Civil action—Proceeding which discloses no offence, if to be quashed.* Where the nominee of a policy holder claiming payment in respect of a life policy effected at Chittagong, and resident within the District of Chittagong, brought a charge of cheating in the Court of the District Magistrate of Chittagong against the Secretary and other officers of an Insurance Company having its head office at Gujranwalla in the Punjab and a branch office at Chittagong, and the Insurance Company brought a charge of cheating against the nominee and others in the Court of the District Magistrate of Gujranwalla, both charges relating to the payment of the amount secured on the policy: *Held* (on an application by the nominee under s. 185, Cr P C.), that the High Court could properly make an order under s 185, Cr P C, to the effect that the offence should be enquired into and tried at Chittagong and transfer the case from the Court of the District Magistrate of Gujranwalla to that of the District Magistrate of Chittagong. Proceedings in the case were, however, stayed for two months to enable the accused to institute a Civil suit. *Held* (on the application of the officers of the Insurance Company), that as, on the face of the record, no offence had been disclosed against them, the proceeding against them should be quashed HIRAN KUMAR CHOWDHURY, *v.* MANGAL SEN (1912)
**17 C. W. N. 761**

2. ——— *High Court if can interfere merely on the ground of convenience.* Where the petitioners were prosecuted in the Court of the Additional District Magistrate of Lahore under ss. 409, 420, 467, 447, Penal Code, and on the allegations of the prosecution the Courts at Chittagong and Lahore were equally competent to exercise jurisdiction in the case: *Held,* that s 185, Cr. P. C., does not warrant interference by the High Court merely upon the ground of convenience. The decision of the High Court within the local limits of whose appellate jurisdiction the offender actually is, can only be sought where a doubt arises as to the Court by which an offence should be enquired into or tried. RAJANI BINODE CHACKERBURTTY *v.* THE ALL INDIA BANKING AND INSURANCE CO., LD., LAHORE (1913).
**17 C. W. N. 1207**

——— s. 190 (*c*).

*See* JURISDICTION OF CRIMINAL COURT.
**I. L. R. 40 Calc. 71**

——— *Information before police reported to be false—Judicial enquiry ordered by Deputy Magistrate disposing of police-report—Case made over to another Magistrate—Issue of process by latter after enquiry—Competency of such Magistrate to try accused.* Where the police reported an information of theft lodged against the petitioners by one S to be false and recommended the prosecution of S, and the Deputy Magistrate in charge on receipt of the police-report ordered a judicial enquiry although there was no complaint by S and subsequently recalled that order and made over the case for disposal to another Deputy Magistrate, who after taking evidence issued summons against the petitioners: *Held,* that the Deputy Magistrate, who issued process against the petitioners, did not act either upon a police-report or upon a complaint, and although s. 190, cl. (*c*), may not strictly apply, the petitioners ought to be allowed to have the case tried by another Magistrate. ANANTA RAM TEWARY *v.* SHEIKH ALTAB SARKAR (1913) . . . **17 C. W. N. 795**

——— s. 195

*See* PERJURY **I. L. R. 36 Mad. 471**

*See* SANCTION FOR PROSECUTION
**I. L. R. 40 Calc. 37, 237, 423, 584**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 195—*contd.*

——— *Penal Code (Act XLV of 1860), ss. 193, 511—Court—District Judge hearing election petition under s. 22 of the Bombay District Municipalities Act (Bom. Act III of 1901) is a Court—False evidence before the District Judge—Sanction for prosecution.* A District Judge hearing an election petition under the provisions of s. 22 of the Bombay District Municipalities Act (Bombay Act III of 1901), is a "Court" within the meaning of s 195, clause (*b*) of the Criminal Procedure Code, 1898 No prosecution for attempting to fabricate false evidence (ss. 193 and 511 of the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by s. 195 of the Criminal Procedure Code, 1898. *Raghoobuns Sahoy* v *Kokil Singh, I L. R. 17 Calc. 872,* followed. *In re* NANCHAND SHIVCHAND (1912) . **I. L. R. 37 Bom. 365**

——— s. 195 (*1*) (*a*)—*Sanction—Disobedience of the order of a public servant—Application for sanction if necessary—Police-report.* Where sanction for a prosecution under s. 188. Penal Code, for disobedience of an order under s. 144, Cr. P. C., was granted by the Magistrate on a police-report setting forth the facts of the disobedience of the order and also containing a request that the petitioner should be prosecuted under s. 188, Penal Code: *Held,* that the order was clearly made under s. 195 (*1*) (*a*), Cr. P C. *Per* CHAPMAN, J. So far as the provisions of s. 195 (*1*) (*a*) are concerned, there is no necessity of any application for sanction. PANCHU MONDAL *v* THE KING-EMPEROR (1913).

**17 C. W. N. 976**

——— s. 195 (*b*)—*Penal Code (Act XLV of 1860), s. 193—Fabricated document—Certified copy filed with plaints as proof—Charge of fabricating false evidence, sanction if necessary.* The petitioner was said to have fabricated a *kabinnama* which was registered and he subsequently brought a suit in the Munsif's Court for restitution of conjugal rights and filed a certified copy of the *kabinnama* along with the plaint as proof of marriage and asked the Court to cause the original to be produced: *Held,* under s. 195, cl. (*b*), Cr. P. C., no Court could take cognizance of an offence under s. 193, Penal Code, imputed to the petitioner except with the previous sanction or on a complaint of the Munsif's Court or of some other Court to which the Munsif's Court was subordinate, such offence being committed in relation to a judicial proceeding in the Munsif's Court. ABDUL MAJID KHAN *v.* MUNSHI NARUL HUQ (1913).

**17 C. W. N. 937**

——— s. 195, cls. (*b*) and (*c*)—*Sanction to prosecute—Power of Appellate Court to grant sanction—Appeal—Revision. Held* that the Appellate Court, equally with the Court of first instance, has power to grant sanction for a prosecution in respect of a document filed or evidence recorded in the suit. *Held*, also, that a petition under s 195 (*6*) of the Code of Criminal Procedure seeking

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 195—*concld.*

the cancelment of an order under s. 195 (*1*), should be classed as a criminal appeal. BHADESWAR TIWARI *v.* KAMTA PRASAD, (1912).

**I. L. R. 35 All. 90**

——— s. 195, cl. (7) (*c*)—*Order granting sanction by Presidency Small Cause Court—Appeal to High Court—Jurisdiction to Appellate and not Original Side—'Principal Court of Original Jurisdiction,' meaning of.* From an order of the Presidency Small Causes Court giving or refusing sanction, an appeal lies to the High Court generally and not to any particular branch of it. But the jurisdiction it exercises being Appellate and not Original, it is the Appellate side alone that can dispose of such matters. The effect of clause (7) (*c*) of s. 195, Criminal Procedure Code, is merely to designate the Court to which an appeal lies under that clause and not to describe the nature of the jurisdiction which it exercises in dealing with orders of the Small Cause Court. Its effect is only to make the High Court the appellate tribunal. *Sew Bollock Singh* v. *Ramdhan Bania, 14 C. W. N., 806,* followed. *Per* CURIAM: When one Court deals with a judgment of another Court having power to confirm or to set it aside, the jurisdiction it exercises is appellate jurisdiction Original jurisdiction is the jurisdiction in original proceedings instituted in the Court, whether suits, petitions or other proceedings. The Original Side of the High Court is not a different *Court* from the Appellate Side: the Court is one; but it exercises both original and appellate jurisdiction. JAMNA DOSS *v.* SABAPATHY CHETTY (1913).

**I. L. R. 36 Mad. 138**

——— ss. 195, 476, 532, 537.

*See* JURISDICTION OF CRIMINAL COURT.

**I. L. R. 40 Calc. 360**

ss. 202, 476.

*See* COMPLAINT, DISMISSAL OF.

**I. L. R. 40 Calc. 441**

——— s. 203.

*See* CRIMINAL REVISION.

**I. L. R. 40 Calc. 41**

——— ss. 203, 437—*Complaint summarily rejected—Further inquiry—Notice to person complained against not necessary.* A notice to a person against whom a complaint is made is quite unnecessary where it is sought to set aside the summary order rejecting the complaint in a proceeding to which he was actually no party. ANGAN *v.* RAM PIRBHAN (1912).

**I. L. R. 35 All. 78**

——— s. 205—*Indian Penl Code (Act XLV of 1860), s. 326—Purdanashin lady, dispensing with personal attendance in Court—Transfer.* The petitioners, who were *purdanashin* ladies, were placed on their trial on a charge under s 326, Penal Code. The Magistrate refused to dispense with the personal attendance the petitioners in Court. The

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 205—*concld.*

High Court in revision made an order allowing the petitioners to appear by pleader before the Magistrate as also in the Court of Session in case of committal to that Court, subject to the petitioners' having to appear before the Court, to hear the sentence in the case of conviction. The High Court on a consideration of the circumstances transferred the case under s. 526, Cr. P. C. RAJ RAJESHWARI DEBI *v.* THE KING-EMPEROR (1913) **17 C. W. N. 1248**

——— s. 208, sub-ss. (*1*) and (*3*)—*Witnesses, refusal of Magistrate to summon before commitment—Magistrate's discretion.* A Magistrate has a discretion for reasons to be recorded by him to refuse to summon witnesses under s. 208, Criminal Procedure Code (Act XLV of 1898), prior to his making a commitment. Sub-s. (*1*), s. 208, Criminal Procedure Code, contemplates the production of evidence by the prosecution or by the accused without the aid of the Magistrate. Sub-s. (*3*) contemplates the intervention of the Magistrate to secure the attendance of witnesses and in regard to the evidence the Magistrate has a discretion for reason to be recorded by him to refuse to issue process. When therefore s. 210 requires the evidence referred to in s. 208, sub-ss. (*1*) and (*3*), to be recorded before a charge is drawn up, it does not require the Magistrate to record the evidence of witnesses whom in the exercise of the discretion given by sub-s. (*3*), he has deemed it unnecessary to summon. SESSIONS JUDGE OF COIMBATORE *v.* KANGAYA MANTRADIYAR (1913). **I. L. R. 36 Mad. 321**

——— ss 221, 222, 223—*Forgery, charge of —Omission to set out intention.* Where the charge under s. 467, Penal Code, did not set out the intention of the accused: *Held*, that this vitiated the charge. HAIDAR ALI PRADHANIA *v.* EMPEROR (1912) . . . . . **17 C. W. N. 354**

——— s. 222 (*2*)—*Indian Penal Code (Act XLV of 1860), s. 406—Criminal breach of trust —Gross sum specified in charge—Particulars as to time—Defect in charge amounting to illegality—Applicability of s. 537, Cr. P. C., to cure such defect—Retrial if may be ordered where charge fails for want of evidence.* Where the appellant, who was an executor to the estate of one D M. R under his will and who was finally called upon on the 15th August 1910 to deliver over to the complainant all money, valuables and papers belonging to the testator's estate, was placed on his trial on two charges under s. 406, Penal Code, and was charged in the first charge with having committed criminal breach of trust in respect of or having dishonestly misappropriated the gross amount specified in the charge between 17th August 1909 and 15th August 1910, and in the second charge with having committed the same offence in respect of the account books of the estate between 11th July 1910 and 15th August 1910, and it appeared that most of the sums making up the gross amount charged

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 222—*concld.*

were received before the period specified in the charge, and the evidence did not disclose any completed act of breach of trust between the dates mentioned in the charge and there was no evidence of any dishonest dealing with the account books before the 15th August 1910: *Held*, as to the first charge, that the error in the charge and the discrepancy between the dates specified therein and the actual dates on which the offence appeared to have been committed, were not a mere irregularity which might be cured by the provisions of s. 537, Cr. P. C. It vitiated the whole trial and the appellant was entitled to an acquittal, *Subramanya Ayyar* v. *King-Emperor, 5 C. W. N. 866: I. L. R. 25 Mad. 61*, followed. It was not enough to know that there was embezzlement at some time, before during, or after the period charged, because the charge was framed under the special provisions contained in cl. (*2*) of s. 222, Cr. P. C., and the provison thereto, and it was at any rate necessary to show an act or acts of embezzlement in respect of the gross sum named in the charge or some part of it committed within the space of one year. *Held*, as to the second charge, that the same objection applied to the second charge which however was not bad on the ground that there was a separate offence as regards each account book and the appellant could not be tried for more than three of such offences, the books forming one set of account books of the estate and having been found together in two locked boxes, the keys of which were with the accused. No retrial was ordered in this case as the charges failed not because they were not deficient in point of form, but because they were not supported by the evidence adduced. PROMOTHA NATH RAY *v.* KING-EMPEROR (1912) . . **17 C W. N 479**

——— s. 233

*See* CHARGE . **I. L. R. 40 Calc. 846**

——— ss. 233 to 235.

**I. L R. 40 Calc. 318**

——— ss 233, 235, 239—*Irregularity in charge—Misjoinder of offences and parties—Charge framed confusing—Prejudice—Re-trial by a new Magistrate.* Where the two petitioners were charged under s 324, Penal Code, with causing hurt to three persons and only one charge was framed against them which was in the following terms—"That you, or on about the 1st day of February 1906 at M voluntarily caused hurt to B. S. and L. by a *dao*, a cutting instrument, and thereby committed an offence punishable under s. 324, I. P. C.," and one of the petitioners was convicted under s. 324, Penal Code, and the other petitioners was convicted, by the lower Appellate Court under s. 352, Penal Code, for using a *lathi* against two of the persons named in the charge: *Held*, that the irregularity in the charge might have prejudiced the accused in their trial and the conviction should be set aside and the accused should be retried

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)**—*contd.*

——— s. 233—*concld.*

on charges properly framed. Re-trial by a new Magistrate ordered SITAL CHANDRA MOITRA *v.* THE EMPEROR (1906). . **17 C. W. N. 419**

——— ss. 248, 258, 345—*Warrant case—Non-compoundable-offence—Complainant withdrawing from prosecution—Order of acquittal—Practice and procedure.* In a warrant case in respect of a non-compoundable offence, it is not competent to the Magistrate on a private complainant's offering to withdraw from the prosecution, to enter an order of acquittal. EMPEROR *v.* RANCHHOD BAWLA (1912) . . . . **I. L. R. 37 Bom. 369**

——— ss. 250—*False charge—Vexatious charge—Compensation awarded to accused from complainant—Order sanctioning prosecution of complainant for false charge under s. 211 of the Indian Penal Code (Act XLV of 1860).* S 250 of the Criminal Procedure Code (Act V of 1898) applies to a charge which is false and also to a charge which is frivolous or vexatious. *Emperor* v. *Bai Asha, 5 Bom. L. R. 128,* and *Beni Madhub Kurmi* v. *Kumud Kumar Biswas, I. L. R. 30 Calc. 123,* followed. It is competent to a Magistrate passing an order of compensation, under s. 250 of the Criminal Procedure Code, to also recommend issue of sanction to prosecute the complainant under s. 211 of the Indian Penal Code, 1860. *Adikkan* v. *Alagan, I. L. R. 21 Mad. 237,* followed. *Bachu Lal* v. *Jagdam Sahai, I. L. R. 26 Calc 181,* not followed. *In re* GOPALA BHAU (1912).
**I. L. R. 37 Bom. 376**

——— ss. 255, 256, 271, 272 and 428

*See* EVIDENCE ACT (I OF 1872) S. 21.
**I. L. R. 36 Mad. 457**

——— s. 260.

*See* COMPANIES ACT (VI OF 1882), S. 74.
**I. L. R. 35 All. 173**

——— s. 284—*Assessors—Trial with only one duly appointed assessor—Trial illegal.* Of two assessors assisting the Sessions Judge in the trial of a sessions case, one only had been duly summoned to act as an assessor in that case. The other was a gentleman of some position who had formerly been on the list of assessors but had been exempted on the recommendation of the District Magistrate: *Held,* that in these circumstances there was no lawful trial before a lawfully constituted tribunal, and that a new trial must be ordered. *Queen-Empress* v. *Badri, All. W. N. (1894), 201,* followed. EMPEROR *v.* MAN SINGH (1913) . . . . **I. L. R. 35 All. 570**

——— ss. 297, 303.

*See* JURY, TRIAL BY.
**I. L. R. 40 Calc. 367**

——— ss. 297, 303, 304—*Trial by Court of Sessions—Verdict, how to be taken, where many accused and both jury and assessors charged.* S. 297, Criminal Procedure Code (Act XIV of 1898)

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)**—*contd.*

——— s. 297—*concld.*

specifically enacts that the Judge shall only charge the jury "when the case for the defence and the prosecution reply are concluded" Where therefore the Judge heard arguments and took verdicts, as regards certain accused and subsequently went on to hear arguments and take verdicts as regards other accused: *Held,* that the procedure adopted was irregular. The verdict of a jury must be taken collectively upon charges triable by jury even where the jury may be sitting as assessors to try other charges triable by assessors. A jury having delivered a verdict may not be again asked to consider that verdict. It may only be questioned to find out what in fact the verdict is. Criminal Procedure Code, ss. 303 and 304, discussed and explained PUBLIC PROSECUTOR *v.* ABDUL HAMED (1913) . **I. L. R. 36 Mad. 585**

——— s. 301—*Trial by jury—Verdict settled by casting lots—Enquiry thereabout—Evidence of individual jurors if admissible.* Where it was alleged that the verdict of the jury was arrived at by casting lots and the Sessions Judge held an enquiry into the matter in the course of which he examined besides other persons, all the jurors: *Held,* that the statement of a juror as to what happened in the jury room is inadmissible. KING-EMPEROR *v.* HARKUMAR BURMAN ROY (1913).
**17 C. W. N. 787**

——— s. 307 cl. (*3*)—*Judge and jury, disagreement between—Duties of High Court on reference.* In the case of a reference to the High Court on a disagreement between the Sessions Judge and the jury, under s. 307, cl.(*3*), Cr. P. C., the High Court is to give due weight not to the opinion of the jury alone but to that of the Sessions Judge as well. EMPEROR *v.* SHEIKH NIAMATULLA (1913).
**17 C. W. N. 1077**

——— ss. 309, 403, 423, 439.

*See* ASSESSORS, EXAMINATION OF.
**I. L. R. 40 Calc. 163**

——— s. 337, cl. (*3*)—*Tender of pardon—Approver-Breach of the conditions of pardon—Discharge of accused—Forfeiture of pardon—Trial of approver—Approver committed to Sessions Court—Re-trial of the discharged accused—Accused to be committed, if primâ facie case made out to Sessions Court for joint trial with the approver—Joint trial—Practice and procedure.* In an inquiry into a charge of dacoity against five accused persons, the Magistrate granted a conditional pardon to one of them. The approver was examined as a witness in the inquiry against the four remaining accused persons; but he denied all knowledge of the alleged dacoity and the accused persons were discharged by the Magistrate under s 209 of the Criminal Procedure Code (Act V of 1898). The pardon granted to the approver was next withdrawn and the case as against him with regard to dacoity was proceeded with under s. 339 of the Criminal Procedure Code. It ended in his being committed for trial to the Court

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 337—*concld.*

of Sessions. The material piece of evidence to be adduced against the approver was his confessional statement which implicated both himself and the four accused persons. The Sessions Judge referred the case to the High Court for an order quashing the commitment and directing the re-trial of the approver along with the discharged accused persons. *Held*, that the High Court had the power to direct that the accused persons, who had been discharged, should be subjected to a re-trial jointly with the approver, for, under s. 437 of the Criminal Procedure Code, the High Court had the power in the case of those accused persons to direct that there should be a fresh inquiry, and if that inquiry ended in the framing of a charge that they should be committed to a particular Court of Sessions. *Held*, further, that inasmuch as the provisions of sub-s. (*3*) of s. 337 of the Criminal Procedure Code were fully carried out at the time when they were applicable, namely, during the pendency of the Magisterial proceedings, they would not constitute and bar against the High Court's ordering that if the inquiry against the discharged persons ended in a commitment, they should be committed to trial jointly with the approver. *Per* CURIAM: Sub-s. 3 of s. 337 of the Criminal Procedure Code contemplates only a case where there has been a commitment made by the Magistrate to the Court of Session or the High Court. It omits to consider the case where the Magistrate himself on his own responsibility discharges the accused person. The meaning of the sub-section is that the approver shall not be set at large until the judicial proceedings pending against the accused are finished. For the purposes of the section it is immaterial whether the proceedings are finished by a Magisterial order of discharge before trial, or by a Judge's order of acquittal after trial. In the case of the Magisterial discharge, the sub-section would be satisfied if the approver were detained in custody or on bail until the order of discharge was made. EMPEROR *v.* INTYA SALABAT KHAN (1912)

**I. L. R. 37 Bom. 146**

——— s. 342—*Cross-examination of accused, propriety of.* Cross-examination of the accused by putting questions with a view to induce him to incriminate himself condemned. HAIDAR ALI PRADHANIA *v.* EMPEROR (1912).

**17 C. W. N. 354**

——— ss. 345, 403 (*2*)—*Several offences alleged in complaint—Accused summoned for one of such offences—Compromise of such offence with leave of Court—Further prosecution for the other offences if lies—Case if revivable on the ground of non-payment of compensation for compromise* The petitioner was accused of committing house trespass, causing grevious hurt and being members of an unlawful assembly but was summoned only under s. 325, Penal Code, and the offence under that section was compromised with the leave of the Court.

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 345—*concld.*

The complainant subsequently filed another complaint and sought to revive the case alleging that the terms of the compromise had not been carried out: *Held*, that the petitioner could not be again prosecuted either for grevious hurt or house trespass or for being members of an unlawful assembly, the common object being to commit offences which had been compromised BASIRUDDI *v.* KHAIRAT ALI (1913). . . **17 C. W. N 948**

——— s. 349—'*Shall pass such order as he thinks fit*,' *meaning of.* The words 'such order as he thinks fit' in s 349, Criminal Procedure Code, do not empower the Superior Magistrate to send the case back to the Sub-Magistrate for disposal but only empower him to pass such final order disposing of the case as he may think fit. *Re* PONNUSAMY NADAN (1913) . . **I. L. R. 36 Mad. 470**

——— ss. 364, 533.

*See* EVIDENCE ACT (I OF 1872), s. 91.

**I. L. R 35 All. 260**

——— s 374—*Capital sentence—Circumstances to be considered by the High Court in confirming sentence of death—Delay between passing of sentence in the Sessions Court and final orders in the High Court, if sufficient ground for not confirming sentence of death. Per* CARNDUFF, J.—As the law stands in India where the alternative sentences of death and transportation are prescribed for murder, the fact that the accused had the capital sentences suspended over their heads for nearly six months is a matter for the consideration of the Judge of the High Court who finally disposes of the appeal, and he ought not to confirm the sentence of death which might have been rightly passed by the Sessions Judge in the first instance, unless he personally thinks that such sentence should be carried out at the time final orders are passed by him, and delay, such as in the present case, is a sufficient reason for reframing from imposing the extreme penalty. AUTOR SINGH *v.* EMPEROR (1913).

**17 C. W N. 1213**

——— ss. 397, 123—*Sentence—Postponement of sentence—Person undergoing imprisonment for failing to give security—Penal Code (Act XLV of 1860), s 379—Theft—Practice and procedure.* The accused was convicted of an offence of theft and sentenced to suffer rigorous imprisonment for six months. At that date he was undergoing imprisonment for failing to give security for good behaviour The Magistrate directed that the sentence passed in the theft case should take effect after the expiry of imprisonment inflicted in the security proceedings:—*Held*, that the sentence passed in the theft case could not be postponed to the expiry of imprisonment in the security proceedings inasmuch as the latter was not a "sentence of imprisonment" as used in s 397 of the Criminal Procedure Code, 1898 *Emperor* v. *Kanji, 5 Bom. L. R. 26, Emperor* v. *Durga, 6 Bom. L. R. 1098,*

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 397—*concld.*

and *Emperor* v. *Arjun, I. L. R 34 Bom. 326*, followed EMPEROR *v.* VISHNU BALKRISHNA (1912) **I. L. R. 37 Bom. 178**

——— s. 403 (*1*)—*Autrefois acquit—S. 403 (4), scope of—Sanction to prosecute, s 195—Indian Penal Code (Act XLV of 1860), ss 182 and 211.* Sanction was obtained by the complainant to prosecute the accused for an offence under s. 211, Indian Penal Code. Accused was tried and convicted; but the conviction was quashed by the High Court in revision on the ground that the accused had not committed an offence under that section but under s 182, Indian Penal Code, for which no sanction had been granted. Complainant thereupon obtained sanction to prosecute the accused under s. 182, Indian Penal Code. On accused pleading in bar of prosecution s. 403 (*1*), Criminal Procedure Code, the Magistrate overruled the objection and his order was confirmed by the Court of Session. Accused petitioned the High Court *Held*, that the prosecution was barred by s. 403 (*1*), Criminal Procedure Code *Held*, further, that s. 403 (*4*) refers to the character and status of the tribunal when it refers to competency to try an offence and that a sanction under s. 195, Criminal Procedure Code, is not a condition of the competency of the tribunal but only a condition precedent for the institution of proceedings. *In re* GANAPATHI BHATTA (1913). **I L. R. 36 Mad. 308**

——— s. 413—*Appeal—Concurrent sentences aggregating to more than one month, by a Magistrate of the first Class—Whether appeal lies.* For the purpose of appeal, concurrent sentences passed by the trying Magistrate on an accused must be taken in the aggregate. The petitioner and others were found guilty by a Magistrate of the first Class, under ss. 143 and 365, read with s. 114, Penal Code, and each of them was sentenced to one month's rigorous imprisonment under each of the sections, the sentences to run concurrently: *Held*, that an appeal lay to the Court of Sessions. ABDUL KHALEK *v.* THE KING-EMPEROR (1912) **17 C. W. N. 72**

——— s. 435—*Order by Deputy Magistrate amounting to a dismissal of complaint—Fresh complaint disposed of by District Magistrate—Further enquiry ordered by Sessions Judge—Jurisdiction to make such order.* Where the opposite party filed a complaint against the petitioner before the Deputy Magistrate of Singbhum who called for a police-report and subsequently on a consideration of that report passed the following order on the 28th November 1911: "Enter mistake of law, s. 406, I P. C." and the opposite party thereupon filed another complaint before the Deputy Commissioner who ordered a judicial enquiry by the Deputy Magistrate and after considering his report directed that the case should be entered as false as the outcome of a civil dispute; and then the opposite party moved the Sessions Judge who ordered a further enquiry under s. 437, Cr. P. C. *Held*, that having regard to the provisions of sec. 435, sub-s. (*4*), Cr. P C, the Sessions Judge should not have ordered further enquiry into the complaint. The order of the Deputy Magistrate, dated the 28th November 1911, must be regarded as an order dismissing the complaint *Girish Chandra* v *The Emperor, 6 C. W N. 638, Nagendra Nath Sen* v. *Mr. Korb, 8 C. W. N. 456*, followed. That the case having been disposed of by a competent authority it could not thereafter have been withdrawn by the Deputy Commissioner to his own file under s. 528, Cr P. C. That when the Deputy Commissioner proceeded to revise the Deputy Magistrate's order and have a further enquiry made, it must be taken that he was acting under s. 435, Cr. P. C. SIDDIK *v* CHAKAURI KHANSAMA (1913). **17 C. W. N. 451**

CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.*

——— s. 435—*concld.*

——— s. 439.

1. ——— *Revision—Powers of High Court—District Registrar.* A District Registrar is not a Court subordinate to the High Court either on the civil, criminal or revenue side, and the High Court has no power to interfere with the order of the Registrar impounding a document and calling upon the applicants to show cause why they should not be prosecuted for forgery. EMPEROR *v.* UDIT NARAIN DUBE, (1912) . . . . **I. L. R. 35 All. 109**

2. ——— *Revision on facts, —Practice of the High Court and its powers under the law—When High Court should consider evidence in revision—Civil Procedure Code (Act V of 1908), s. 100—Indian Penal Code (Act XLV of 1860), s. 211—Nature of proof necessary. Per* MOOKERJEE, J.—Applications for revision in criminal cases stand on a fundamentally different footing from appeals against appellate decrees in civil suits In cases of the latter description the Court is bound by the rigid provisions of s. 100, C. P. C., to act on findings of fact embodied in the judgment of the lower Appellate Court. In criminal cases there is no such statutory restriction to the exercise of the jurisdiction of the High Court. As a matter of practice the High Court in revision does not ordinarily interfere with the conclusions of the lower Appellate Court on questions of fact but there can be no question as to the competency of the High Court to interfere with a finding of fact when the occasion requires it and the Court will not hesitate to do so when satisfied that the finding is manifestly erroneous and a miscarriage of justice would result from it if left uncorrected. *Bellios* v. *Queen, 12 B. L. R. 249; Buran Saheb* v. *King-Emperor, 6 Bom. L. R. 1069*, referred to. Observations of Jenkins, C. J., in *Bankatram* v. *King-Emperor, I. L. R. 28 Bom. 533, 566*, quoted with approval. The application of the observations of the Judicial Committee in *Mirza Sajjad*

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)**—*contd.*

——— **s. 439**—*concld.*

*Hussain v Nawab Wazir Ali Khan, 16 C. W. N 889*, that Judges in India must not have 'impliedly the duty laid upon them of making their narrative of the circumstances minutely and completely exhaustive under the penalty that if they failed to do so the absence from their minds of elementary considerations might be presumed," is not to be extended to criminal cases. A critical examination of the judgments of the subordinate Courts is not of much assistance when the High Court proceeds to revise the findings of fact of the lower Courts. A much safer course is to obtain a broad and comprehensive view of the facts of the case and then to ascertain whether there has been a failure of justice. *Rama Nath Kalapahar v. King-Emperor, 2 C. L J 524*, referred to. In a case under s. 211, Penal Code, failure on the part of the complainant to establish the truth of his allegation does not by any means justify the inference that the complaint was false; and to secure a conviction in this class of cases it must further be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with his innocence *Per* CARNDUFF, J. The observations of the Judicial Committee in *Mirza Sajjad Husain v. Nawab Wazir Ali Khan, 16 C. W. N. 889*, may well be given a wider application and are especially relevant in respect of judgments of affirmance even in criminal cases. *Per* IMAM, J It is not usual for the High Court in revision to discuss a case on its facts though it is open to it to do so. RAM PROSAD *v.* THE KING-EMPEROR (1912).

**17 C. W. N. 379**

——— **ss. 439, 476.**

*See* HIGH COURT, JURISDICTION OF.

**I. L. R. 40 Calc. 477**

——— **s. 476.**

*See* "CERTIORARI."

**I. L. R. 36 Mad. 72**

*See* COLLECTOR. **I. L. R. 40 Calc. 465**

**1.** ——— *Order under, by Civil or Revenue Court if may be revised by High Court under s. 439—Civil Procedure Code (Act V of 1908), s. 115—High Courts Act 24 & 25 Vict., C. 104, s. 14.* In the case of an order passed under s. 476, Cr. P. C., by a Civil or a Revenue Court, s. 439, Cr. P. C., has no application, but such an order can be revised by the High Court under s. 115 of the Civil Procedure Code or under s. 15 of the High Courts Act 24 & 25 Vict., C. 104. An order made by a Criminal Court under s. 476, Cr. P. C., is liable to revision by the High Court under s. 439, Cr. P. C. S. 439, Cr. P. C., is to be read along with and subject to the provision of s. 435, Cr. P. C Where an order under s. 476 made by a Civil or a Revenue Court is sought to be revised by the High Court, the Bench exercising Criminal Jurisdiction cannot as such deal with the matter but the Judges composing that Bench may do so if authorised by the Chief Justice under s. 14 of the High Courts Act HAR PRASAD DAS *v.* THE EMPEROR (1913).

**17 C. W. N. 647**

**2.** ——— *Acquittal of the accused by one Magistrate, order for prosecution of the complainant by another, without jurisdiction—Belated order under s. 476, Cr. P. C, no independent judicial opinion.* Where the persons complained against by the petitioner were tried and acquitted by a Deputy Magistrate on the 1st August and a week later another Deputy Magistrate called on the petitioner to show cause why he should not be prosecuted under s 211, Penal Code, and finally on the 23rd August directed his prosecution under s. 476, Cr. P. C., but subsequently on the District Magistrate observing that the order for prosecution ought to be made by the Magistrate who tried the accused persons, the trying Magistrate on the 16th September passed the following order— "Petition purporting to show cause against prosecution under s. 211 filed. The cause shown is not good; draw up proceedings under s. 211, I. P C."—This order purporting to be made under s. 476, Cr P. C., although the accused persons had applied for the prosecution of the petitioner: *Held*, that there was no judicial proceeding of any sort or kind before the Magistrate who made the order of the 23rd August, and his order for the prosecution of the petitioner was altogether beyond his jurisdiction. That the belated order of the 10th September did not represent the independent judicial opinion of the Magistrate, who made it If he had thought that action ought to be taken under s. 476, Cr. P. C., he ought to have passed the order one and a half months before and the fact that he did not do so indicated very clearly that he did not at the time think it necessary. There may be cases in which a Court may not think it necessary in the public interest to take action under s. 476, Cr P. C, but may be willing to allow the person injured to seek redress. In such a case, it is not necessary that the order should be passed at or near the time of the disposal of the original case. *Held*, however, in the present case, that even treating the order of the 16th September, as one made under s. 195, Cr. P. C., the further prosecution of the petitioner should not be sanctioned, considering how illegally and unnecessarily he has been harassed in these proceedings. BHIM LAL SHAH *v* EMPEROR (1912) . . . **17 C. W. N. 290**

**3.** ——— *Information before Police reported false—Informant called upon by Magistrate to prove his case—Order for prosecution under s. 211, Penal Code—Jurisdiction to make such order.* The petitioner lodged an information with the Police, who reported it to be false. The petitioner made no complaint in Court, but the Sub-Divisional Magistrate on receipt of the police-report passed the order "complainant to prove

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*contd.***

——— **s. 476**—*concld.*

his case " and made over the case for disposal to another Magistrate who ultimately made an order under s. 476, Cr. P. C., against the petitioner: *Held*, that the order of the Sub-Divisional Magistrate and the proceedings held thereunder do not come within any of the provisions of the Code of Criminal Procedure and the order for prosecution was without jurisdiction. SARBA MAHTON *v.* THE EMPEROR (1913) . . **17 C. W. N. 824**

——— **s 488**—*Maintenance order if can be enforced against estate of deceased husband.* After the death of the person against whom an order for maintenance was made there is no claim enforceable under s. 488, Cr. P. C, against the estate of the deceased and the order for maintenance cannot be enforced in respect of arrears accrued due during the lifetime of the person who was ordered to pay maintenance. EAD ALI *v.* LAL BIBEE (1913) . . . **17 C. W. N 1130**

——— **ss. 517 and 520**—*Appeal—Jurisdiction—Power of Appellate Court to pass orders regarding property in respect of which an offence has been committed.* S. 520 of the Code of Criminal Procedure gives to an Appellate Court the same power as the Court which originally tried a case to pass orders under s. 517 of the Code. *Baloram Gogai* v. *Chintaram Kohta, 9 C W. N. 549*, followed. *In re Devidin Durgaprasad, I. L. R. 22 Bom. 844*, distinguished. EMPEROR *v* AZMAT SHAH KHAN (1913)
**I. L. R. 35 All. 374**

——— **s. 526.**

1. ——— *Transfer—Nature of grounds warranting a transfer outside the district.* Where the Magistrate of a district refused to grant an interview to, and cancelled the arms license of, a person who was under trial for various offences before the Joint Magistrate, it was *held* that these were sufficient reason for transferring the cases against him out of the district, there being also grounds for granting a transfer from the Court of the Joint Magistrate. *Farzand Ali* v. *Hanuman Prasad, I. L R. 19 All. 64*, followed EMPEROR v. RAM KISHAN DAS (1913)
**I. L. R. 35 All. 5**

2. ——— *Transfer—Rule from High Court staying further proceedings—Telegram by the party, effect of—Issue of warrant pending rule.* Whereupon the High Court having issued a Rule staying further proceedings the petitioner sent a telegram which was laid before the trying Magistrate, but the petitioner having failed to appear on the date previously fixed, the Magistrate issued a warrant upon the petitioner: *Held*, that the sending of the telegram did not in any way absolve the obligation of the petitioner to appear before the Court on the date fixed and the issue of the warrant upon the petitioner was no ground for transfer of the case. The inconvenience of transferring a preventive proceeding for trial from one district to another adverted to. CHANDI PROSHAD SINGH *v.* THE KING-EMPEROR (1912) . . . **17 C. W. N. 536**

**CRIMINAL PROCEDURE CODE (ACT V OF 1898)—*concld.***

——— **s. 526**—*concld.*

——— **ss. 535, 537** (*a*).

*See* CHARGE . **I L. R. 40 Calc. 168**

——— **s. 537.**

*See* UNITED PROVINCES EXCISE ACT (IV OF 1910), S 63. **I. L. R. 35 All. 358**

**CRIMINAL PROCEEDINGS.**

*See* LEAVE TO APPEAL TO PRIVY COUNCIL . . **L. R. 40 I. A. 241**

*See* PRACTICE . **L. R. 40 I. A. 241**

**CRIMINAL REVISION.**

——— *Dismissal of complaint reasons for—Criminal Procedure Code (Act V of 1898), s. 203—Grounds not taken in the first Court of Revision might be taken in the High Court—Government Circular, its effect—Statute law—Practice.* Grounds, which were not urged in the first Court of Revision, might be taken in the High Court. Under s. 203 of the Criminal Procedure Code (Act V of 1898) reason for dismissing the complaint must be recorded. No circular of the Government can authorize Magistrates to infringe, or in any way alter, the statute law. MANIRUDDIN SIRCAR *v.* ABDUL RAUF (1912).
**I. L. R. 40 Calc. 41**

**CROSS OBJECTIONS.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 22.
**I. L. R. 37 Bom. 511**

**CULPABLE HOMICIDE.**

*See* PENAL CODE (ACT XLV OF 1860), SS. 37, 302, 304.
**I. L. R. 35 All. 506, 560**

**CUMULATIVE SENTENCES.**

——— *Rioting—Separate sentences for rioting and causing hurt—Penal Code (Act XLV of 1860), ss. 147, 323* Separate sentences for the offences of rioting and hurt are legal where it is found that each person took an individual part in the assault. *Nilmony Poddar* v. *Queen-Empress, I. L. R. 16 Calc. 442, Mohur Mir* v. *Queen-Empress, I L. R. 16 Calc. 725, Ferasat* v. *Queen-Empress, I. L. R. 19 Calc. 105*, referred to.—RAM ANGUTHA SINGH *v.* EMPEROR (1913).
**I. L. R. 40 Calc. 511**

**CUSTOM.**

*See* ADOPTION . **I. L. R. 40 Calc. 879**

*See* AGARWAL BANIAS OF ZIRA.
**I. L. R. 40 Calc. 879**

*See* PRE-EMPTION . **I. L. R. 35 All. 472**

——— **of inalienability—**

*See* IMPARTIBLE ZAMINDARI.
**I. L. R. 36 Mad. 325**

**CUTCHI MEMONS.**

*See* MAHOMEDAN LAW—MAINTENANCE
**I. L. R. 37 Bom. 71**

## D

**DAMAGE.**

*See* INSURANCE . **I. L. R. 37 Bom. 183**

**DAMAGES.**

——— suit for—

*See* LIMITATION **I. L. R. 40 Calc. 898**

——— too remote—

*See* DAMAGES IN ACTIONS ON TORT.
**I. L. R. 36 Mad. 580**

**DAMAGES IN ACTIONS ON CONTRACT.**

——— principle of—

*See* DAMAGES IN ACTIONS ON TORT
**I. L. R. 36 Mad. 580**

**DAMAGES IN ACTIONS ON TORT**

——— *Principle of assessing —Damages, too remote, cannot be recovered—Principle of assessing damages in actions on contract compared—Duty of plaintiff to take means to reduce the damages—Easements Act (V of 1882), s. 33.* In a suit for damages sustained by the plaintiff in consequence of the defendant's obstruction of the plaintiff's right to way of his field, owing to which the plaintiff did not cultivate his lands, their Lordships *held*, (i) that non-cultivation of the lands was too remote a consequence of the defendant's wrongful act of obstruction as the plaintiff had not shown that there were no other means of cultivating and that it was in consequence of the wrong it was not reasonably possible for him to cultivate; (ii) that damages for the loss of crops could not be given, but that all that he was really entitled to was the extra cost which he would be put to for the cultivation of his land in consequence of the right of way being obstructed; and (iii) that the plaintiff was entitled to substantial damages for interference with the evidence of his right. Sedgwick on Damages, paragraphs 202 and 215, referred to. S. 33 of the Easements Act (V of 1882) and *Baijnath Singh v. Tetar Chowdry, 6 C. W. N. 197*, applied. *Per* CURIAM Though the rule is the same in actions on contract and in tort, *viz.*, that the damages which the plaintiff is entitled to must result directly from the wrongful act of the defendant and that no claim can be made to damages which are only too remotely connected with it, there may be differences in the application to actions on tort of this basic principle which is common to both kinds of actions; in a contract it is the duty of the plaintiff as a prudent man to take measures to reduce the damages as far as possible, for a breach of contract consists in the defendant's failure to do a certain act that he is bound to do and it would be quite open to the plaintiff to take other measures to obtain the result he expected from the defendant's performance; a tort, on the other hand, may consist in the defendant's

**DAMAGES IN ACTIONS ON TORT—** *concld*

failing to do an act which he is bound to do or in doing one which he ought not to do or in preventing the plaintiff from doing an act which he is entitled to do. KARIBASAVANA GOWD *v.* VEERABHADRAPPA (1913) . . **I. L. R. 36 Mad. 580**

**DAMDUPAT.**

*See* LIMITATION **I. L. R. 37 Bom 326**

——— *Decree in mortgage-suit between Hindus—Interest accruing after date fixed for redemption, whether rule applicable to.* The rule of *damdupat* applies to Hindus only so long as the relation between the parties is contractual, and ceases to apply when the matter has passed from the realm of contract into that of judgment. Where a decree has been passed on a mortgage, the rule does not apply to the interest accruing after the date fixed for redemption. *In the matter of Hari Lall Mullick, I L. R. 33 Calc. 1269*, followed. *Ram Kanye Audhicary* v. *Cally Churn Dey, I. L. R. 21 Calc. 840*, not followed. *Sundar Koer v. Sham Krishen, I. L. R. 34 Calc. 150 L. R. 34 I. A 9*, referred to NANDA LAL ROY *v.* DHIRENDRA NATH CHAKRAVARTI (1913)
**I. L. R. 40 Calc. 710**

**DANABANDI AND BATAI SYSTEMS OF TENANCY.**

——— *Presumption as to contract of tenancy from contract of tenancy in respect of adjoining lands—Record of rights published after institution of suit, if can be relied on—Non-attendance of landlord at apportionment—Liability of tenant if he appropriates whole of crops—Bengal Tenancy Act (VIII of 1885), s 69.* The plaintiff claimed that certain lands were held by the tenants under the *danabandi* system but the Courts below found that they were held under the *batai* system. In two other suits against the tenants of the same village the Court found that the tenants held under the *danabandi* system There was no proof that there was an invariable custom prevalent in the village. The lower Appellate Court in deciding the case relied upon the record-of-rights which was finally published long after the institution of the suit: *Held*, that the mere circumstance that the contract of tenancy in respect of some land was of one description does not necessarily indicate that the contract was of the same description in respect of different lands in the same village held by other tenants, and the Court was free to conclude upon the evidence that the lands were held under the *batai* system. That the lower Appellate Court did not act improperly in relying on the record-of-rights KAMALESHWARI PERSHAD SINGH *v.* KANHARI SINGH (1913). . **17 C. W. N. 1159**

**DASTUR DEHI.**

*See* PRE-EMPTION . **I. L. R. 35 All. 478**

**DAUGHTER.**

*See* HINDU LAW—DAUGHTERS' ESTATE.
**I. L. R. 35 All. 481**

**DAUGHTER'S SON OF THE GREAT-GRANDSON OF THE GREAT-GREAT-GRANDFATHER.**

*See* HINDU LAW—STRIDHAN
I. L. R. 40 Calc. 82

**DECISION BASED ON OATH.**

*See* RES JUDICATA.
I. L. R. 36 Mad. 287

**DECLARATORY DECREE.**

*See* AGRA TENANCY ACT (II OF 1901), SS. 79, 95 . . I. L. R. 35 All. 299

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 11 . . . I. L. R. 37 Bom. 307

*See* COURT-FEE . I. L. R. 40 Calc. 615

**DECLARATORY SUIT.**

*See* COURT FEE . I. L. R. 40 Calc. 245

**DECREE.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 . I. L. R. 37 Bom. 415

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SCH. III, S. 7 (*l*) (*b*); SS. 69, 70
I. L. R. 37 Bom. 32

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 68, O. XXI, R 100
I. L. R. 37 Bom. 488

*See* HIGH COURT, BOMBAY, CIVIL CIRCULAR 96, CL. (*l*).
I. L. R. 37 Bom. 631

*See* LIMITATION ACT (XV OF 1877), SCH. II, ART. 179
I. L. R. 37 Bom. 42, 317

*See* LIMITATION ACT (IX OF 1908), SCH I, ART. 95 . I. L. R. 37 Bom. 158

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL. (5)
I. L. R. 37 Bom. 559

——— form of—

*See* HINDU LAW—ALIENATION
I L R. 40 Calc. 966

*See* MORTGAGE . I L. R. 40 Calc. 378

——— part assignment of—

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16 . I. L. R. 35 All. 204

1. ——— *Rectification of—Suit if lies to rectify a decree in a previous suit.* Where a decree was passed by a Court which had jurisdiction and authority to make it and the judgment-debtors failed to adopt the remedies for correcting the decree which were open to them by law, by reason of their omission to ascertain the terms of the decree in time, a suit to rectify the decree is not maintainable. *Chand Mea v. Asima Banu, 10 C. W. N. 1024, Jogeswar Atha v. Ganga Bishnu Ghattack, 8 C. W. N. 473, Sri Gopal v. Parthi Singh, 6 C. W. N. 889*, referred to. BHANDI SINGH *v.* DOWLAT RAY (1912)
17 C. W. N. 82

**DECREE**—*concld.*

2 ——— A decree must be self-contained and must be executed as it stands. If it is not in accordance with the judgment, application should be made for its amendment. BHIKARI SUKUL *v.* GADADHAR RAMANUJ DAS (1912) . . . . . 17 C. W. N. 87

3. ——— *Preliminary, in suit for accounts, appeal against—Final decree made pending appeal—Preliminary decree set aside on appeal —Application to execute final decree—Executing Court, if can treat the final decree as superseded, though not formally set aside* On 21st March 1908, a preliminary decree was passed directing the defendant to render accounts to the plaintiff. On 21st May, the defendant preferred an appeal and did not thereafter appear in the proceedings for taking accounts which went on in the first Court and did not take any part in those proceedings which ended in a decree in favour of the plaintiff for a definite sum on the 28th May 1908 On 11th August 1908, the Appellate Court set aside the preliminary decree holding that the defendant was not bound to render any account and that decree was affirmed by the High Court in second appeal on 30th August 1910. On 22nd February 1911, the plaintiff having applied for execution of the final decree of 28th May 1908. *Held*, that the passing of the final decree did not take away the jurisdiction of the Appellate Court to hear the appeal against the preliminary decree. *Mackenzie v. Narsinga Sahai, 10 C. L. J. 113, Baikuntha Nath v. Salimulla, 6 C. L J. 547*, and *Madhusudan v. Kamini Kanta, I. L. R. 32 Calc. 1123*, distinguished. That the final decree, which was dependent on and subordinate to the preliminary decree, was superseded by the decision of the Appellate Court setting aside the preliminary decree, and it was not necessary for the defendant to have the final decree formally set aside. That it was competent to the executing Court to refuse to execute the final decree on the ground that it had been superseded and ceased to be operative RAM NATH SINGH *v.* BASANTA NARAIN SINGH (1913)
17 C. W. N. 868

**DEDICATED PROPERTY.**

——— acquisition of—

*See* SHEBAIT . I. L. R. 40 Calc. 895

**DEED.**

——— construction of—

*See* PROMISSORY NOTE.
I. L. R. 36 Mad. 370

**DEED OF ENDOWMENT**

*See* RELIGIOUS TRUST
I. L. R. 40 Calc. 251

**DEED OF TRUST.**

——— construction of—

*See* TRUST . I. L. R. 40 Calc. 232

## DEFAMATION.

*See* PENAL CODE, S. 499
**I. L. R. 36 Mad. 216**

——— *Statement by accused made in application to District Magistrate for transfer of case—Absolute or qualified privilege—English law, applicability of, in the mofussil—Construction of Statues—Penal Code (Act XLV of 1860), s. 499.* S. 499 of the Penal Code is exhaustive; and if a defamatory statement does not fall within the specified Exceptions, it is not privileged. The English common law doctrine of absolute privilege does not obtain in the mofussil in India. A defamatory statement made in bad faith by an accused, against whom a trial is pending in a Criminal Court, and contained in a petition to the District Magistrate for a transfer of the case, is not absolutely privileged, but is punishable under s. 499 of the Penal Code: *Green v Delanney, 14 W. R. Cr. 27, Augada Ram Shaha v. Nemai Chand Shaha, I. L R. 23 Calc. 867,* and *Kali Nath Gupta v. Gobind Chandra Basu, 5 C. W. N. 293,* followed. *Pataraju Venkata Reddy v Emperor, 13 Cr L. J 275,* dissented from *Babu Gunnesh Dutt Singh v. Mugneeram Chowdhary, 11 B. L R 321, Bhikumber Singh v. Becharam Sircar, I. L. R. 15 Calc 264, Woolfun Bibi v. Jesarat Shaikh, I. L. R. 27 Calc. 262, Golap Jan v. Bholanath Khettry, I. L. R. 38 Calc. 880,* distinguished. *Haidar Ali v Abru Mia, I. L. R. 32 Calc. 756,* referred to *Kari Singh v. Emperor, I. L. R. 40 Calc. 441* (note), explained. The proper course in construing an Act is to ascertain the natural meaning of its language, and not to assume that it was intended to leave the existing law unaltered, except when such intention is stated: *Bank of England v. Vagliano, [1891] A. C. 107,* and *Norendra Nath Sircar v. Kamalbasini Dasi, I. L. R. 23 Calc 563,* followed. The essence of a Code is to be exhaustive in the matters in respect of which it declares the law, and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction: *Gokul Mandar v Pudmanund Singh, I. L. R. 29 Calc 707,* followed. KARI SINGH *v.* EMPEROR (1912)
**I. L. R. 40 Calc. 433**

## DEFENDANT.

——— **right to offer evidence.**

*See* PRACTICE . **I. L. R. 40 Calc. 119**

## DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879).

——— **s. 2—**

**1.** ——— *Agriculturist—Definition—Estate of agriculturist in charge of Court of Wards—The Court of Wards is an agriculturist—Court of Wards Act (Bom. Act I of 1905).* A Court of Wards constituted under the Court of Wards Act (Bom. Act I of 1905) and representing the estate of a minor agriculturist is entitled to bring a suit under the provisions of the Dekkhan Agriculturist's Relief Act (XVII of 1879). The Dekkhan Agriculturists' Relief Act countenances no distinction based upon the comparative riches or poverty of the person whose status is being investigated. MANOHAR RAMCHANDRA *v.* COLLECTOR OF NASIK (1912)
**I. L. R. 37 Bom. 97**

**2.** ——— *Agriculturist—Definition—Person engaging himself personally in agricultural labour is an agriculturist irrespective of his income from other sources—Bharwad or shepherd—Pastoral income.* A person who ordinarily engages personally in agricultural labour within certain specified limits is an agriculturist as defined by s 2 of the Dekkhan Agriculturists' Relief Act, 1879, irrespective of the proportion which his strictly agricultural income may bear to any other income accruing to him. A *bharwad* (shepherd) who engages personally in agricultural labour is an agriculturist although his income from non-agricultural (*i.e.* pastoral) sources may be greater than his other income. BHIKHA FAKIRA *v.* RAICHAND MANJI (1912)
**I. L. R. 37 Bom. 398**

——— **s. 15B**—*Civil Procedure Code (Act V of 1908), O. XXIII, R 3—Agriculturist mortgagor—Suit for account of principal and interest—Decree in terms of a compromise—Compromise made without compliance with the special provisions of the Dekkhan Agriculturists' Relief Act—Compromise valid. Held* by the Full Bench, that a compromise in a suit which came under the Dekkhan Agriculturists' Relief Act (XVII of 1879) was not bad in law because it was made without compliance with the special provisions (s 15B) of that Act. SHIVAYAGAPPA *v.* GOVINDAPPA (1913) . **I. L. R. 37 Bom. 614**

——— **s. 20**—*Court—Instalments, power to grant—Status of agriculturist not at the date of decree, but in execution proceedings.* The Court has no power to grant instalments, under s 20 of the Dekkhan Agriculturists' Relief Act (XVII of 1879), in the case of a judgment debtor who was not an agriculturist when the decree was obtained, but who becomes one at the time of the execution by limiting himself exclusively to profits in land. BALCHAND CHATURCHAND *v.* CHUNILAL JAGJIVANDAS (1913) . **I L. R. 37 Bom. 486**

——— **s 22**—*Decree—Execution—Agriculturist—Exemption from liability to attachment or sale—Absence of proof of exemption—Jurisdiction of the Court to order sale—Civil Procedure Code (Act V of 1908), s 60.* S 60 of the Civil Procedure Code (Act V of 1908) lays down the general rule that property liable to attachment and sale in execution of a decree is lands, houses, etc, belonging to the judgment-debtor. An agriculturist, in order to resist the application of that general rule, must prove that he belongs to the privileged class so as to render s. 22 of the Dekkhan Agriculturists' Relief Act (XVII of 1879) applicable to his case. In the absence of such proof the exemption from liability to attachment or sale does not exist for the purpose of exe-

**DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879)—*concld.***

——— s. 22—*concld.*

cution proceedings and the executing Court has, therefore, complete jurisdiction to make the order for sale. NARAYAN ANANDRAM *v.* GOWBAI (1912) I. L. R. 37 Bom. 415

**DELEGATION.**

——— nazir's power of—

*See* ATTACHMENT I. L. R. 40 Calc. 849

——— by Collector—

*See* REVENUE JURISDICTION ACT, BOMBAY (X OF 1876), SS. 4 (*c*), 5 AND 6. I. L. R. 37 Bom. 542

**DELIVERY.**

*See* SALE OF GOODS. I. L. R. 40 Calc. 523

——— taking of—

DISHONESTLY RECEIVING STOLEN PROPERTY . I. L. R. 40 Calc. 990

**DEPOSIT.**

——— by judgment-debtor—

*See* RATEABLE DISTRIBUTION. I. L. R. 40 Calc. 619

——— order to make—

*See* PRESS ACT (I OF 1910), S. 3 I. L. R. 37 Bom. 555

**DEPUTY COLLECTOR.**

*See* COLLECTOR I. L. R. 40 Calc. 465

**DEPUTY COMMISSIONER.**

——— order of—

*See* HIGH COURT, JURISDICTION OF. I. L. R. 40 Calc. 518

**DEPUTY MAGISTRATE.**

*See* PUNITIVE POLICE. I. L. R. 40 Calc. 452

**DESHMUKHI VATAN.**

*See* HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), SS. 11, 11A I. L. R 37 Bom. 37

**DESHPANDE KULKARNI VATAN.**

*See* PENSIONS ACT (XXIII OF 1871), S. 4. I. L. R. 37 Bom. 91

**DISCHARGE.**

——— order of, by High Court—

*See* JURISDICTION OF CRIMINAL COURT. I. L. R. 40 Calc. 71

**DISCHARGE BY ATTORNEY.**

*See* ATTORNEY AND CLIENT I. L. R. 40 Calc. 386

**DISCIPLINARY ACTION.**

*See* INSTRUCTIONS TO COUNSEL I. L. R. 40 Calc. 898

**DISCIPLINARY JURISDICTION.**

*See* BOMBAY REGULATION (II OF 1827), S. 56 . I. L. R. 37 Bom. 354

**DISCRETION.**

*See* LIMITATION . I. L. R. 37 Bom. 326

*See* PLEADERSHIP EXAMINATION. I. L. R. 40 Calc. 588

——— of trustee—

*See* RELIGIOUS TRUST. I L. R. 40 Calc. 232

**DISHONESTLY RECEIVING STOLEN PROPERTY.**

——— *Receipt of property—Production of the railway receipt, payment of freight and taking of formal delivery—Property not actually removed, or attempted to be removed, from railway premises—Penal Code (Act XLV of 1860). s 411.* Where the consignee presented a railway receipt for certain stolen goods to the station-master, paid the freight and received formal delivery of the package from the latter: *Held*, that the goods had come to be not merely in the potential possession of the consignee, but actually within his power and unrestricted control, though he had not removed them from the station where they were then lying, nor made any attempt to do so, and that he had received them within s. 411 of the Penal Code *Reg v. Hill, 3 Cox. C C 533; 1 Den. C. C. 453*, distinguished. SHEWDHAR SUKUL *v.* EMPEROR (1913) . I. L. R. 40 Calc. 990

**DISMISSAL OF COMPLAINT.**

——— reasons for—

*See* CRIMINAL REVISION I. L. R. 40 Calc. 41

**DISPUTE CONCERNING LAND.**

——— *Ijmali property—Claim by co-sharers to exclusive possession of specific plots—Jurisdiction of Magistrate—Criminal Procedure Code (Act V of 1898), s. 145.* A Magistrate has jurisdiction, under s. 145 of the Criminal Procedure Code in the case of *ijmali* land, where each party claims to be in exclusive possession of specific portions of the same. Under s. 145 the question for the Magistrate's decision is not whether the parties have a title to possession jointly, or a title to possession separately, but whether either of them is in actual possession. Co-sharers in an *ijmali* estate may, by express or tacit arrangement, be each separately in actual possession of specific or demarcated portions of the same, and s. 145 applies to such a case. When, however, the parties are found to be not constructively but actually in joint possession, the section has no application. *Makhan Lal Roy v. Barada Kanta Roy, 11 C W. N. 512*, explained and distinguished. *Per* HARINGTON *J.* Where a party alleges exclusive possession

**DISPUTE CONCERNING LAND**—*concld.*

and acquiesces in the hearing of the case on that footing, he cannot afterwards be heard to say that the whole proceedings are bad because the land is *ymali*. BASANTA KUMARI DASI *v* MAHESH CHANDRA LAHA (1913) . **I. L. R. 40 Calc. 982**

**DISTRIBUTION.**

——— period of—

*See* WILL . **I. L. R. 40 Calc. 274**

**DISTRICT DEPUTY COLLECTOR.**

*See* MAMLATDARS' COURTS ACT (BOM ACT II OF 1906), s. 23
**I. L. R. 37 Bom. 595**

**DISTRICT MUNICIPALITIES ACT (BOM. ACT III OF 1901).**

——— s. 22—

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195
**I. L. R. 37 Bom. 365**

**DIVORCE.**

*See* HINDU LAW—MARRIAGE.
**I. L. R. 37 Bom. 295**

——— *Husband's petition—Foreign domicile—Divorce Act (IV of 1869)—Territorial jurisdiction* The husband, who was an Italian subject with an Italian domicile, instituted proceedings for divorce on the ground of his wife's adultery. The marriage had been solemnized in India, and the parties were residing in British India: *Held*, that, under the provisions of the Indian Divorce Act, the Court was bound to grant a divorce on proof of adultery, although the divorce would have no effect outside India. *LeMesurier* v. *LeMesurier*, [1895] A C. 517, and *Shaw v. Gould*, L R 3 E & I. App 55, referred to. GIORDANO *v* GIORDANO (1912)
**I. L. R. 40 Calc. 215**

**DIVORCE ACT (IV OF 1869.)**

*See* DIVORCE . **I L. R. 40 Calc. 215**

——— s. 3 (2). *Political Resident at Aden—District Judge—Jurisdiction to try suits under Indian Divorce Act—Aden Courts Act (II of 1864), s. 3.* The political Resident at Aden, not having been appointed "a Commissioner of a Division" is not a District Judge as defined in s 3, sub-s (2), of the Indian Divorce Act, 1869, and has no jurisdiction to try suits under the Act. MOUNA *v* MOUNA (1912) . **I. L. R. 37 Bom. 57**

**DOCTRINE OF SATISFACTION.**

——— *Inapplicability in India of doctrine of satisfaction—Indian Succession Act (X of 1865), s. 164—General applicability in India of the principles of the Indian Succession Act in so far as they are not overriden by some special provision of local law or usage—Khojas—Law applicable to Khoja wills—The Indian Evidence Act (I of 1872), s 92.* The plaintiff claimed to be entitled to a sum of money deposited by him with one Karmali Moledina, deceased, a Khoja Mahomedan, and also to a legacy under the will of Karmali Moledina He therefore sued the executors of the will of Karmali Moledina for a declaration to that effect and for the administration, if necessary, of the estate of Karmali Moledina. The defendants maintained, *inter alia*, that the legacy must be taken as intended as payment of the balance due on the deposit by the plaintiff from Karmali Moledina and that the plaintiff could not claim both the legacy and the debt. *Held*, that, inasmuch as the principles of interpretation announced in the Indian Succession Act were intended by the Legislature to be universally applicable unless overriden by some special provision of local law or usage, the doctrine of satisfaction which is abolished by s 164 of the Indian Succession Act, must be considered as exploded in India. *Held*, further, that if it be considered that the wills of Khojas are governed by Hindu Law, the will of Karmali Moledina would be governed by s 164 of the Indian Succession Act, but if such wills are governed by Mahomedan Law, the will would have to be interpreted in accordance with the provisions of the general law of evidence, and, in particular, would be governed by the provisions of s 92 of the Indian Evidence Act, and that in either case the defence set up under the doctrine of satisfaction would be defeated *Quære*. Whether the wills of Khojas are governed by Hindu or Mahomedan Law. HASSONALLY MOLEDINA *v.* POPATLAL PARBHUDAS (1912) . . . **I. L. R. 37 Bom. 211.**

**DOMICILE.**

*See* DIVORCE . **I. L. R 40 Calc. 215**

## E

**EASEMENT.**

1. ——— *Flow of water over servient tenement in a definite channel, if necessary for acquiring right of easement.* The fact that water flows over the surface of the servient tenement without a definite channel for its carriage cannot prevent the acquisition of an easement. *Bidhu Bhusan Palit* v. *Beny Madhab Mazumdar, 8 C. W N. 244*, overruled MUNSHI MISSER *v.* BHIMRAJ RAM (1913) . **I. L. R. 40 Calc. 458**

2. ——— *Overhanging eaves for discharge of water—Easement and not tresspass.* The possession of a *panch* or eaves for discharge of water overhanging the defendant's land is an easement and not an occupation of defendant's property. CHOTALAL HIRACHAND *v.* MANILAL GAGALBHAI (1913)
**I. L. R. 37 Bom. 491**

3. ——— *Discharge of water stopped by owner of dominant tenement—Servient owner if may complain—Defined channel on dominant tenement, effect of.* An easement exists for the benefit of the dominant tenement alone, and the servient owner acquires no right to

**EASEMENT**—*concld.*

insist on its continuance or to ask for damages on its abandonment. The principle does not cease to be applicable where water has flowed in a defined channel on the dominant tenement before it reaches the servient tenement. AFTAB CHOWDHURY *v.* ASOKHADEM (1913). . . 17 C. W. N. 1066

**EASEMENTS ACT (V OF 1882).**

——— s. 33—

*See* DAMAGES IN ACTIONS ON TORT. I. L. R. 36 Mad. 580

**EAVES.**

*See* EASEMENT . I. L. R. 37 Bom. 491

**EJECTMENT.**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), s. 111. I. L. R. 35 All. 145

——— *Chota Nagpur Tenancy Act (Beng. VI of 1908), ss. 4 (3), 41—Non-occupancy raiyats—Under-raiyats, ejectment of—Transfer of property Act (IV of 1882), s. 106—Incidents of tenancy created by contract or custom—Verbal notice, sufficiency of* Where a raiyat sued an under-raiyat in ejectment and got a decree but, on appeal, the Judicial Commissioner of Chota Nagpur dismissed his suit on the ground that the provisions of s. 41 of the Chota Nagpur Tenancy Act had not been complied with, as an under-raiyat has at least the rights of a non-occupancy raiyat: *Held*, that the view taken by the Judicial Commissioner was erroneous. An under-raiyat must, for the purposes of that Act, be treated as belonging to a class of tenants quite distinct from the class of non-occupancy raiyats. Those portions of that Act which dealt with tenants generally could be applied to under-raiyats. In a suit for ejectment of an under-raiyat, by a raiyat the Court can have regard only to the relations established between the parties either by contract or custom. Where there is no evidence of a lease, the tenancy would no doubt be ordinarily held to be a tenancy from year to year. There is no statutory provision that the tenancy of an under-raiyat in Chota Nagpur can be terminated only by a notice in writing. GURU CHARAN HAJAM *v.* SUKLAL HAJAM, (1913) I. L. R. 40 Calc 858

**ELECTION.**

*See* NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883), s. 10. I. L. R. 35 All. 308

*See* SALE OF GOODS. I. L. R. 40 Calc. 523

**ELECTION PETITION.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), s. 195 I. L. R. 37 Bom. 365

**ENDOWMENT.**

*See* COURT-FEE . I. L. R. 40 Calc 245

*See* HINDU LAW —ENDOWMENT. I. L. R. 35 All. 283

**ENDOWMENT**—*concld.*

*See* LIMITATION . I. L. R. 37 Bom. 231

*See* MAHOMEDAN LAW—ENDOWMENT I. L. R. 40 Calc. 297

*See* RELIGIOUS TRUST I. L. R 40 Calc. 251

**ENGLISH CASE.**

——— *Decisions in, how far applicable in India* Courts in this country are not bound by isolated *dicta* in English cases not directly in point. Their applicability will depend upon their being consistent with principles of justice equity and good conscience. MANJHOORI BIBI *v.* AKEL MAHUMED, (1913). . 17 C. W. N 889

**ENGLISH LAW.**

——— applicability of—

*See* DEFAMATION . I. L. R. 40 Calc. 433

**ENGLISH RULE.**

*See* STANDARD OF PROOF I. L. R. 40 Calc. 898

**ENCUMBRANCE.**

*See* EXECUTION OF DECREE. I. L. R. 40 Calc. 623

**ENHANCEMENT OF RENT.**

*See* CHOTA NAGPUR TENANCY ACT, 1908, s 27 . I. L. R. 40 Calc. 518

*See* SUIT . I. L. R. 40 Calc. 428

——— *Bengal Tenancy Act (VIII of 1885), s. 30—Landlord of a holding, meaning of—Res judicata—Civil Procedure Code (Act XIV of 1882), s 13—Matter directly and substantially in issue, what constitutes.* The plaintiff and the defendants were howladers of a property. The defendants took a raiyat, lease from the plaintiff of his undivided share of the howla. Upon a suit brought by the plaintiff under s 30 of the Bengal Tenancy Act for enhancement of rent against the defendant *Held*, that the plaintiff was not the landlord of a "holding" within the meaning of s. 30 of the Act, and as such the suit was liable to be dismissed. *Haribole Brohmo* v. *Tasimuddin Mondul, 2. C. W. N. 680*, followed. In a previous suit between the parties for enhancement of rent, it was decided that the plaintiff had the right to enhance the rent of the defendants; but the suit was dismissed on the ground that the rent paid by the defendants, was not lower than the rate at which rent was paid by tenants of adjoining lands. In a subsequent suit between the same parties, the question was raised by the plaintiff that his right to enhance the rent of the defendants was *res judicata*: *Held*, that inasmuch as the decision upon the question of the right of the plaintiff to enhance the rent was not the basis of the decree ultimately made in the previous suit, it was not *res judicata* between the parties PARBATI DEBI *v.* MATHURA NATH BANERJEE (1912) . . I. L. R. 40 Calc. 29

**ERRONEOUS ORDER.**

——— on a question of law—

*See* LIMITATION ACT (XV OF 1877), SCH. II, ARTS 178 AND 179
**I. L. R. 36 Mad. 553**

**ERROR, OMISSION OR IRREGULARITY.**

*See* CHARGE **I. L. R. 40 Calc. 168**

**ERROR OF LAW.**

*See* CHARGE . **I. L. R. 40 Calc. 168**

**ESTATES LAND ACT (MAD. I OF 1908).**

——— s. 3, cl. (7) and 6, cl (1)—"*Final decree*" *in s. 3, cl. (7), meaning of Held*, by the Full Bench as follows—where an appeal from a decree in ejectment passed under the old law is heard after the commencement of Madras Act I of 1908 (Estates Land Act) the defendant being a ryot in possession of ryot land on such date, he is entitled to claim a right of occupancy under section 6, clause (*1*) of the Act notwithstanding the original decree. The words "final decree" in the last sub-clause of section 3, clause (7) mean a decree which is not under appeal or liable to be set aside or modified on appeal *Obiter* CHIEF JUSTICE—It is clear that where a landlord obtains a decree in ejectment before the commencement of the Act and executes it before the commencement of the Act the ryot could not claim the benefit of the first part of section 6 *Obiter* · KRISHNASWANI AYYAR J—"The final decree of a competent civil Court referred to in the definition of old waste" in section 3, clause (7), is a decree obtained in a proceeding independent of that in which the question of occupancy right is dealt with under section 6, clause (*1*), or the presumption under section 23 is made The presumption under section 23 applies to all suits or appeals whether pending at the date of the commencement of the Act or instituted thereafter. KANAKAYYA *v.* JANARDHANA PADHI. (1913)
**I. L. R. 36 Mad. 439**

**ESTOPPEL**

*See* ADVERSE POSSESSION.
**I. L. R. 40 Calc. 173**

*See* CIVIL PROCEDURE CODE 1882 s. 287 (*c*) . **I. L. R. 35 All. 257**

*See* LANDLORD AND TENANT
**I. L. R. 36 Mad. 53**

*See* MORTGAGE . **I. L. R. 40 Calc. 534**
**I. L. R. 35 All. 353**

*See* NOTICE . **I. L. R. 140 Calc. 503**

*See* TRADE-MARK **I. L. R. 40 Calc. 814**

*See* WAKF . **I. L. R. 37 Bom. 447**

———*Evidence Act (I of 1872) s. 115—Sale to plaintiff by B, of land as his—Attestation by A with knowledge of the contents, when he was the owner, effect of—Civil Procedure Code (Act XIV of 1882), s 317—'Fraudulently.'* If *A*, with the knowledge that the recital in a sale-deed that the land thereby conveyed belongs to *B* and is in his (*B*'s) enjoyment as owner, attests the sale-deed executed by *B* in favour of the plaintiff he is estopped from setting up thereafter his title to the land, even though he (*A*) might be the certified purchaser of the same in Court auction. *Sarat Chander Dey* v. *Gopal Chunder Laha, L. R 19 I. A. 203, 215, 216*, followed *Cairncross* v. *Lorimer 3 Macq 829*, and *Carr* v. *London and North-Western, Railway Company, L. R. 10 C. P 307, 317*, referred to. *Per* SUNDARA AYYAR, J.—No actual or verbal representation is necessary to give rise to estoppel. It is no contravention of the rule enacted in section 317, Civil Procedure Code (Act XIV of 1882), to hold that *A* is estopped in such as case as even a title acquired by a statute may be waived just like a title under a private conveyance. It is fraudulent within the meaning of section 317,Civil Procedure Code, on *A*'s part to have obtained a sale certificate in his name after his attestation. *Abdul Aziz* v. *Kanthu Mullick, I L R. 38 Calc. 512, Krishnaswami Chetty* v *Vellaichami Thevan, 21 Mad. L J. 1077, Madras Hindu Mutual Benefit Permanent Fund* v *Ragava Chetti, I L R. 19 Mad. 200, Bishan Dial* v. *Ghazi-ud-din, I. L. R 23 All. 175, and Monappa* v *Surappa, I L R 11 Mad. 234*, distinguished. *Per* SADASIVA AYYAR, J.—*Obiter*: Section 317, Civil Procedure Code, will be a bar only if the plaintiff is obliged to set up as part of his case for relief the plea that *A* purchased in Court auction as *benamidar* for *B*. After the transfer of Property Act no waiver or transfer of rights can be recognised in the case of immoveable property in the absence of a registered instrument. Having regard to the ordinary course of conduct of Indians in this presidency, attestation by a person who has or claims any interest in the property covered by the document must be treated *primâ facie* as a representation by him that the title and other facts relating to title recited in the document are true and will not be disputed by him in favour of the oblige under the document. KANDASAMI *v.* NAGALINGA, (1913)
**I. L. R. 36 Mad. 564**

**ESTOPPEL BY CONDUCT.**

*See* MORTGAGE . **I. L. R. 40 Calc. 378**

**ETIQUETTE AFFECTING COUNSEL.**

*See* BAR COUNCIL, RESOLUTION OF.
**I. L. R. 40 Calc. 898**

**EVIDENCE.**

*See* BAILMENT . **I. L. R. 37 Bom. 122**

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882). . **I. L. R 36 Mad. 477**

*See* EVIDENCE ACT (I OF 1872)

*See* EVIDENCE ACT (I OF 1872), SS 69 AND 70 . . **I L. R. 35 All. 364**

*See* JURY, TRIAL BY
**I. L. R. 40 Calc. 367**

*See* MORTGAGE . **I. L. R. 35 All. 353**

*See* PRACTICE **I. L. R. 40 Calc. 119**

**EVIDENCE**—*contd.*

*See* PRE-EMPTION . **I. L. R. 35 All. 472**

*See* PRIVY COUNCIL **I. L. R. 36 Mad. 501**

1. ——— *Evidence Act (I of 1872), s. 122—"Representative in interest."—Disclosure by wife of communications made by deceased husband during marriage.* Where there is no "representative in interest" who can consent under s 122 of the Evidence Act, to the disclosure of communications made by a deceased husband to his wife during marriage, the wife should not be permitted, even if willing, to disclose such communications The widow of a deceased husband is not his "representative in interest" for the purpose of giving such consent. NAWAB HOWLADAR *v* EMPEROR, (1913) **I. L. R. 40 Calc. 891**

2. ——— *Admissibility of evidence—Family settlement—Evidence of settlement consisting of a joint application by the parties for mutation in respect of the property in dispute.* The brother and widow of a deceased Hindu settled a dispute between them as to the ownership of the property of the deceased by means of a joint application in the Revenue Court asking that the property should be recorded half in the name of each. This was done, and subsequently each sold the share of which he or she was recorded as owner. Thereafter, the widow sued to recover the share which had gone to her husband's brother *Held,* that it must be presumed from the application in the mutation proceedings the recording of names by the Revenue Court in accordance with that application and the subsequent sales on the strength of that record, that the parties entered into a family arrangement, and the application presented to the Revenue Court was, therefore, not compulsorily registrable and was admissible in evidence. KOKLA *v.* PIARI LAL (1913) . . . . **I. L. R. 35 All. 502**

3. ——— *Expert in handwriting, value to be attached to evidence of—Corroboration of such evidence.* An accused should not ordinarily be convicted of forgery upon the uncorroborated testimony of a handwriting expert. The value to be attached to the evidence of handwriting experts discussed *In re* VENKATA ROW (1913) . . . **I. L. R. 36 Mad. 159**

4. ——— *Private knowledge of facts by Judge, how far may be relied on by him—Savaram lands—Meaning of Savaram—Madras Estates Land Act (I of 1908), s. 185, construction of.* Where the Judge used knowledge gained by him from his own experience as to scarcity of land for cultivation (although his knowledge was partly derived from facts relating generally to the lands in the zamindari of Nuzvid in which the lands in suit were situated): *Held,* that the fact of which he had such knowledge was merely a fact of economical history and that he had not acted illegally in relying upon it. *Per* SUNDARA AYYAR J—A Judge is not entitled to rely on specific facts not proved by the evidence

**EVIDENCE**—*contd.*

in the case but known to him personally or otherwise but he may use his general knowledge and experience in determining the credibility of evidence adduced before him and applying it to the decision of the specific facts in dispute in the case. *Per* SADASIVA AYYAR, J.—I think the only practical rule which can be laid down in these cases is that if a Judge knows of his own knowledge as an individual observer of a past relevent concrete, private incident, and that fact cannot be subjected to ocular proof at the time of trial (such as a person's colour, resemblance of features, appearance, behaviour, chemical experiments on the present condition of the object), and if the truth of such incidents is contested between the parties, he should mention his private knowledge of such incidents to the parties and he should refuse to be the Judge in that case, unless both the parties after he so mentions to them his said personal knowledge of that particular incidents, state that they have no objection to his continuing as Judge In the present case, the learned Judge has not gone further than to use the general knowledge which he has acquired as a past revenue officer and as a revenue Court of experience in the course of the performance of his duties in zamindari tracts; and I hold that he was entitled to use such knowledge in coming to conclusion on the facts after the consideration of the evidence let in in this case." *Per* CURIAM · The word *savaram* as applied to lands does not necessarily convey the idea of full proprietary right in the zamindar. All that is clear is that *savaram* was compensation granted to a Zamindar or Revenue officer under the Mahomedan Government. *Per* CURIAM Where pattas entered into in 1897 evidenced agreements to lease operating from 1st 1898: *Held,* that section 185 of the (Madras) Estates Lands Act I of 1908( does not preclude the Court from taking such pattas into consideration, it being the date of the contract that is material in deciding whether the evidence is admissible. *Per* SUNDARA AYYAR, J.: The Act does not lay down any rule as to all the kinds of evidence that may be produced to prove that the land in question is private land and it cannot be held that all evidence as to leases subsequent to 1st July 1898, is shut out altogether. *Per* SADASIVA AYYAR, J.—Evidence as to leases granted after 1st July 1898, is shut out by section 185 if the leases are sought to be used for the purpose of proving the character of the tenure of the land. LAKSHMAYYA *v.* VARADARAJA APPAROW. (1913)

**I. L. R. 36 Mad. 168**

5. ——— *Mortgage—Recital of receipt of consideration—Recital admissible as against representatives of original mortgagor. Held,* that the admission of the receipt of consideration contained in a mortgage deed is admissible in evidence against the representatives in interest of the original mortgagors. *Brajeshware Peshakar* v. *Budhanuddi I. L. R. 6 Calc 268, Nawal Kunwar* v. *Bakhtawar Singh, 10 All. L. J. 390,* and *Abdul Majid* v. *Mahbub Ali, F.A. No. 129 of 1911,* followed. *Manohar Singh*

**EVIDENCE**—*concld.*

v. *Sumirta Kuar*, *I. L. R 17 All 428*. not followed. *Bisheshwar Dayal* v. *Harbans Sahoy*, *6 C. L J. 659*, *Ghurpheini* v. *Permeshwar Dayal*, *5 C L J. 653*, and *Rahim Jan Bibi* v *Iman Jan*, *14 C L J. 173*, doubted. BIHARI LAL *v.* MAKHDUM BAKSH (1913) . . . . **I. L. R. 35 All. 194**

**EVIDENCE ACT (I OF 1872).**

———— **ss. 3, 114, ill. (g), 125.**

*See* LIMITATION **I. L. R. 40 Calc. 898**

———— **ss. 21 and 81**—*Evidence of publications of a newspaper by a particular person, merely by production of the paper—Sufficiency of Criminal Procedure Code (Act V of 1898), ss. 255, 256, 271, 272, 428—"Necessary" meaning of —Mistake of Court, as to primâ facie case—Retrial. Per* SUNDARA AYYAR and PHILLIPS. JJ —Merely, exhibiting a copy of a private newspaper containing a libellous statement without any sort of proof such as the production of an authenticated copy of a declaration under section 7 of Act XXV of 1867, is no proof of publication of the libel by the person by whom the paper purports to have been published. Evidence that a certain copy of the paper "*appears* to be printed and published by *A*" is no proof of publication, by him. If there be proof of publication of a newspaper of by *A* then section 81, Evidence Act, presumes that what purpose to be a newspaper of a particular name is that paper and that every copy of its was issued by the publisher of that paper. *Gathercole* v. *Miall*, *15 M. & W. 319*, *Rex* v. *Forsyth*, *Russ. & R 274*, and *Watts* v. *Fraser*, *7 Ad. & E. 223*, considered. A statement in a complaint that the accused published the libel is no evidence against the accused as it was not made in the presence of the accused. The fact that the accused never denied publication by him of the libel does not relieve the prosecution of the necessity of proving affirmatively that the accused published the libel, an essential fact necessary to establish the guilt of the accused. Additional evidence under section 428, Criminal Procedure Code, can be ordered to be taken only if the Appellate Court thinks it necessary. *Quære* : Whether, if the admission by the accused of publication is contained in his written statement, that would relieve the prosecution from the defect in letting in evidence of publication. Difference between admissions in civil and criminal cases pointed out. *Quære* . Whether section 81 of the Evidence Act is not confined to public documents alone. *Per* SUNIDARA AYYAR, J. —Where the prosecution by its own negligence failed to produce evidence which it was its duty to do, additional evidence cannot be considered "*necessary*" by the Appellate Court within the meaning of s. 428. The language of that section seems to indicate cases where, there being already evidence on the record, the Court considered it to be unsatisfactory or where the evidence on record leaves the Court in such a state of doubt that it considers it necessary to enable it to decide the case to have further evidence. In such a case the accused should be ordered to be acquitted and not retried allowing further evidence to be taken. *Per* PHILLIPS, *J* —Where on the Court itself taking a mistaken view that a *primâ facie* case of publication by the defendant had been made out (as was evident from its framing a charge), evidence to that effect was not let in by the complainant; it is a case where the Appellate Court ought to consider that additional evidence is *necessary* within the meaning of s 428, Criminal Procedure Code, and a retrial would be the proper order to be made under the circumstances, if taking additional evidence would not meet the requirements of the case. "Necessity" under s. 428, Criminal Procedure Code, is a matter to be determined on the particular facts of each case. *Per* BENSON, J.—Where the prosecution wanted to let in evidence necessary to prove the offence, but the Magistrate intervened, stating that it was unnecessary in the circumstances of the case and so refused to take that evidence, the case is one in which retrial may properly be ordered or in which the Court may properly call for the additional evidence under s. 428, Criminal Procedure Code. JEREMIAH *v* VAS (1813) **I. L. R. 36 Mad. 457**

**EVIDENCE ACT (I OF 1872)**—*contd.*

———— **s. 21**—*concld.*

———— **s. 32, sub. ss. (3), 5)**—

*See* HINDU LAW—ADOPTION. **I. L. R. 36 Mad. 19**

———— **s. 33**—'*Opportunity to cross-examine*' *meaning of—Whether an accused in a Session's enquiry had the opportunity to cross-examine a prosecution witness* In an enquiry after Chapter XVIII of the Criminal Procedure Code (Act V of 1898), a witness was examined by the prosecution but he was not cross-examined by the accused; in the Sessions trial, the witness having died, his deposition was put in under section 33 of the Indian evidence Act: *Held*, that it is doubtful whether the evidence is admissible under sec. 33 of the Indian Evidence Act; even if it is admissible, its evidentiary value is very small indeed. Having regard to the practice at Sessions enquiries not to cross-examine the prosecution witnesses unless, at the conclusion of the enquiry when the charge is drawn up, the accused thinks it worth while to defend himself in the first Court, it could hardly be said that the accused had the opportunity to cross-examine a witness examined by the prosecution, where the accused did not cross-examine any of the prosecution, witnesses, and was not asked by the enquiring Magistrate to exercise this right of cross-examination. IBRAHIM *v.* THE KING-EMPEROR, (1912) **17 C. W. N. 230**

———— **s. 35**—*Estates Partition Act (VIII of 1876)—V of 1897—Batwara khasra prepared under the Act of 1876, if a record within the meaning of section 35.* A *khasra* prepared under Act *VIII* of 1876 in *batwara* proceedings, which were completed so far as the particular *khasra* was concerned, before Act *V* of 1897 was passed, is not record within the meaning of s. 35 of the Evidence

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 35—*concld.*

Act and cannot be relied on for the purpose of rebutting the presumption raised by an entry in the record-of-rights. *Perma Ray* v. *Kishen Ray, I L. R. 25 Calc. 90,* followed. *Janki Dobey* v. *Kutarath Roy, 13 C. W. N. 93,* distinguished. NANDA LAL PATHUK *v.* MOHUNT CHANURPAT DAS (1913) . . . **17 C. W N. 779**

——— s. 44—

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . **I. L. R. 37 Bom. 563**

——— s. 57—

*See* CHURCH . **I. L. R. 36 Mad. 418**

——— s. 68—*Mortgage—Evidence of execution—Attesting witness—Scribe.* The scribe of a mortgage deed cannot be counted as an attesting witness merely because he has signed the deed, even though the deed may in fact have been executed in his presence. To be an "attesting witness" within the meaning of section 68 of the Indian Evidence Act, 1872, the witness must have seen the document executed and have signed it as a witness. *Ranu* v. *Laxmanrao, I. L. R. 33 Bom. 44, Burdett* v. *Spilsbury, & 10 C. & F. 340,* and *Shamu Patter* v. *Abdul Kadir Ravuthan, I. L. R. 35 Mad. 607,* followed. *Radha Kishen* v. *Fateh Ali Khan, I. L. R. 20 All. 532, Rai Narain Ghosh* v. *Abdur Rahim, 5 C. W. N. 554,* and *Muhammad Ali,* v. *Jafar Khan, All Weekly Notes, (1897) 146,* discussed. BADRI PRASAD *v.* ABDUL KARIM, (1913) **I. L. R. 35 All. 254**

——— ss. 69, 70.—*Evidence—Mortgage—Proof of execution of mortgage—Mortgagors illiterate, and both they and the attesting witnesses dead before suit brought.* A mortgage deed was on the face of it executed in 1889, by three illiterate mortgagors, who affixed their marks, and was attested by more than two witnesses. At the time of the institution of a suit for sale thereon, all the executants and the attesting witnesses were dead, and the evidence tendered in proof of the mortgage consisted of (i) the statement of a witness who professed to be acquainted with the handwriting of two of the attesting witnesses; (ii) a deed of usufructuary mortgage executed by one of executants of the mortgage in suit, and by the representative of the two other executants, which referred to and recognized the genuineness of the mortgage in suit; and (iii) a deed of sale executed in 1902 by the representatives or some of the representatives of the executants of the deed in suit, which recognized by genuineness of the usufructuary mortgage mentioned above. *Held,* that, having regard to sections 69 and 70 of the Indian evidence Act, 1872, this evidence was not sufficient to prove the mortgage in suit. GOBARDHAN DAS *v.* HORI LAL, (1913). . . . **I. L. R. 35 All 364**

——— s. 90—*Secondary evidence of document which may be given—Document, failure of witness to produce—Process fee for warrant, failure to deposit, if default excluding secondary evidence of document—*

EVIDENCE ACT (I OF 1872)—*contd.*

——— s. 90—*concld.*

*Recital of boundaries in documents, if admissible as between persons not parties thereto—Document over thirty years old, opportunity if must be given to prove execution where presumption does not apply—Road-cess return, admissibility of—Omission in a document, if evidence.* Where the plaintiff issued summons upon a witness to produce a lease which was a title deed of the witness and which he was under no agreement with the plaintiff to produce, and on the failure of the witness to attend, the plaintiff to obtain an order for the issue of warrant against the witness but failed to put in the process-fee; *Held,* that, the failure of the plaintiff to get the warrant issued did not amount to default on his part, and that in the circumstances of the case he was entitled to use a certified copy of the document as evidence. A recital as to the boundary of a land in a lease is admissible in evidence against a person who was no party to that document. *Ningaya* v. *Bharmappa, I. L. R. 23 Bom. 63, Abdul Aziz. Mollah* v *Ebrahim Molla, I. L. R. 31 Calc 965, Burha Mandar* v. *Megnath, 2 C. L. J. 4n,* followed. *Abdulla* v. *Kunja Behari, 14 C L. J. 467, Brajeswari* v. *Bhudanuddi I. L. R. 6 Calc 268, Monohar Singh* v. *Sumitra Koer, I. L. R. 17 All. 428,* referred, to. Under section 90 of the evidence Act the Court is not bound to presume the genuineness of a document over thirty years old It must first satisfy itself that the elements necessary to bring the document within the rule in that section exists and then exercise its discretion as to whether, in the circumstances, the presumption of genuineness should be applied to it. If the Court is not satisfied that the presumption should apply, it should call upon the party to produce evidence of its execution. Where, therefore, the Court below rejected such a document without calling upon the party to produce evidence of execution. *Held,* that the Court had not acted properly. The absence of the names of the predecessors of the plaintiff from the list of tenants in a road-cess return not filed by either party to the suit, was admissible in evidence against the plaintiff. IMRIT CHAMAR *v.* SIBDHARI PANDAY, (1911) **17 C. W. N. 108**

——— s. 91—*Evidence, admissibility of—Confession made to enquiring magistrate but not recorded by him in writing—Criminal Procedure Code, ss. 364 and 533.* A confession of an accused person made to a Magistrate holding an inquiry is a matter required by law to be reduced to the form of a document within the meaning of s. 91 of the Indian Evidence Act, 1872, and that no evidence can be given of the terms of such a confession except the record, if any, Procedure section 364 of the Code of Criminal Procedure Section 533 of the Criminal Procedure Code has no application to a case where no record whatever has been made of such a confession. EMPEROR *v.* GULABU (1913) **I. L. R. 35 All. 260**

——— s. 92—

*See* DOCTRINE OF SATISFACTION. **I. L. R. 37 Bom. 211**

**EVIDENCE ACT (I OF 1872)**—*contd.*

———— s. 92—*concld.*

———— s. 92— *Sale of land, consideration for, not as stated in the deed—Oral promise, failure to perform.* Assuming that it may be shown by oral evidence that the real consideration for a deed of sale was not the consideration stated in the deed itself but a promise to maintain the plaintiff, in the absence of coercion, undue influence, fraud or misrepresentation of any kind at the time when the deed of sale was registered and possession taken thereunder, the deed will not be set aside The special equitable doctrine whereby the American Courts have relieved in cases where an aged person has conveyed all his property in consideration of an oral promise to be supported for the remainder of his life by the grantee, not applied SUBBAYYAR *v.* MONIEM SUBRAMANIA AYYAR. (1913).

**I. L. R. 36 Mad. 8**

———— s. 92, prov. 1—*Evidence—Proof of failure of consideration—Promissory note given partly on account of a gambling debt.* The defendant who had been gambling with the plaintiffs and had lost, gave the plaintiffs two promissory notes, partly for his gambling losses and partly on other accounts, but it could not be ascertained what proportion of the total sum secured was represented by the gambling debts. *Held*, on suit to recover on these notes, that it was open to the defendants to prove that the consideration was in part at least money lost in gambling; and that the Court below was justified, on its finding that the part of the consideration represented by gambling debts could not be separated from the rest, in dismissing the whole suit. *Juggarnauth Sew Bux* v. *Ram Dyal, I. L. R. 9 Calc. 791,* distinguished. BALGOBIND *v.* BHAGGU MAL (1913).

**I. L. R. 35 All. 558**

———— s. 106—

*See* MORTGAGE **I. L. R. 40 Calc. 342**

———— s. 114—*Presumption—Mortgage, suit on—bond produced by defendant bearing endorsement of payment signed by mortgagee and her agent—Onus on plaintiff—Case set up by plaintiff found false—Suit if may be decreed upon suspicion that bond was dishonestly got at by defendant.* Where the plaintiff as the legal representative of the original mortgagee sued to enforce a mortgage but was unable to produce the original bond which was produced by the defendant bearing on it an endorsement of payment by the mortgagee and her general agent: *Held*, that, in view of the presumption under s. 114 of the Evidence Act which embodies the ordinary rule of law, the onus lay on the plaintiff of proving affirmatively that the debt was still outstanding, or in other words, that the defendant got possession of the bond by dishonest means and that the signatures to the endorsement were either forgeries or unauthorised. *Quære*:—Whether any question of *onus* remains after the parties have gone into evidence. Plaintiff put forward the case that the bond was dishonestly and fraudulently made over to the defendant by

**EVIDENCE ACT (I OF 1872)**—*concld.*

———— s. 114—*concld*

the mortgagee's general agent and that at the time alleged the mortgagee was not present at the place at which the endorsement was alleged to have been signed Both the Courts in India disbelieved this case. The trial Court upon this finding dismissed the suit, but the Appellate Court held that the *onus* was wrongly thrown on the plaintiff, that the bond must have been purloined by some person during the confusion that followed the mortgagee's death, and from this it was concluded that the defendant must have got the bond by some dishonest means: *Held*, that the presumption under s. 114 of the Evidence Act, could not be set aside by possibility based on surmises. That suspicion, though a ground for scrutiny, cannot be made the foundation of a decision. HASAN KHAN *v.* MANDIR DAS (1912).

**17 C. W. N. 49**

———— s. 115—

*See* ADVERSE POSSESSION.
**I. L. R. 40 Calc. 173**

*See* ESTOPPEL . **I. L. R. 36 Mad. 564**

———— ss. 115, 116—

*See* WAKF . **I. L. R. 37 Bom. 447**

———— s. 116—

*See* LANDLORD AND TENANT.
**I. L. R. 36 Mad. 53**

———— s. 117—

*See* TRADE-MARK **I. L. R. 40 Calc. 814**

———— s. 122—

*See* EVIDENCE **I. L. R. 40 Calc. 891**

**EVIDENCE FOR THE DEFENCE.**

*See* PRACTICE . **I. L. R. 40 Calc. 376**

**EVIDENCE OF JURORS.**

*See* JURY, TRIAL BY
**I. L. R. 40 Calc. 693**

**EVIDENTIARY VALUE.**

*See* CONFESSION **I. L. R 40 Calc. 873**

**EXCISABLE ARTICLE.**

*See* UNITED PROVINCES EXCISE ACT (IV OF 1910), s. 60
**I. L. R. 35 All. 575**

**EXCISE ACT (E. B. and ASSAM I OF 1910).**

———— ss. 36, 53, 72—*Medicated article containing Bhang "Kameshwar Modak" Manufacture and sale by medical practitioner for medicinal purposes if protected—S. 72, effect and scope of—Notification by Local Government—Rules by Board of Revenue.* The petitioner, who was a Kabiraj, was charged under s 53 of the Eastern Bengal and Assam Excise Act with the manufacture and sale of an exciseable article, namely, a mixture called "Kameshwar Modak" which contained *bhang* and

**EXCISE ACT (E. B. AND ASSAM I. OF 1910)—*concld.***

——— s. 36—*concld.*

which admittedly was a medical article prepared by the petitioner for medical purposes: *Held*, that, in regard to the manufacture and sale of the article in question, the petitioner was protected by s. 72 of the Act, the language of which is wide enough to take any case to which it applies without restriction out of the Act. SATISH CHANDRA ROY *v.* THE KING-EMPEROR (1913)
**17 C W. N. 939**

**EXECUTION.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SCH. III, S. 7 (*1*) (*b*); SS. 69, 70
**I. L. R. 37 Bom. 32**

*See* EXECUTION OF DECREE.

*See* LIMITATION ACT (XV OF 1877), ARTS. 178, 179
**I. L. R. 36 Mad. 553**

**EXECUTION-APPLICATION.**

——— by one only of the decree-holders—

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), S 231.
**I. L. R. 36 Mad. 357**

**EXECUTION OF DECREE.**

*See* CIVIL PROCEDURE CODE, 1882 S 287 (*c*). . **I L. R. 35 All. 257**

*See* CIVIL PROCEDURE CODE, 1882, S. 315 . . **I. L R 35 All. 419**

*See* CIVIL PROCEDURE CODE, 1908, S 47. . . **I. L. R. 35 All. 243**

*See* CIVIL PROCEDURE CODE, 1908, S. 60.
**I. L. R. 37 Bom. 415**

*See* CIVIL PROCEDURE CODE, 1908, S 60 (*c*) . . **I. L. R. 35 All. 307**

*See* CIVIL PROCEDURE CODE, 1908, S. 86. . . **I. L. R. 35 All. 138**

*See* CIVIL PROCEDURE CODE, 1908, S. 68, O. XXI, R. 100.
**I. L. R. Bom. 488**

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, R. 16.
**I. L. R. 35 All. 204**

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, RR. 84, 89, 92.
**I. L. R. 35 All. 65**

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, R. 88 . **I. L. R. 35 All. 296**

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, R. 89.
**I. L. R. 37 Bom. 387**

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 4
**I. L. R. 35 All. 518**

**EXECUTION OF DECREE—*contd.***

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 8.
**I. L. R. 35 All. 116**

*See* HIGH COURT, BOMBAY, CIVIL CIRCULAR 96, CL. (*l*) **I. L. R. 37 Bom. 631**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 35 All. 380**

*See* LIMITATION ACT (XV OF 1877), SCH II, ART 179.
**I. L. R. 37 Bom. 42, 317**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART 128 . **I. L. R 35 All. 389**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ARTS 138 AND 144
**I. L. R. 35 All. 432**

*See* LIMITATION ACT (IX OF 1908) SCH. I, ART. 182, CL. (*5*)
**I. L R. 37 Bom. 559**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52 . **I. L. R. 37 Bom. 621**

1. ——— *Notice of execution—Sale—Civil Procedure Code (Act V of 1908), s. 47, O. XXI, rr. 22 and 90—Omission to serve notice, effect of—Whether subsequent sale void—Question relating to execution of decree—Second appeal.* Omission to serve a notice under the provisions of O. XXI, r. 22 of the Civil Procedure Code is not by itself sufficient to render a sale, which has been subsequently held, void. *Sahdeo Pandey* v. *Ghasiram Gyaual, I. L. R. 21 Calc. 19*, not followed. Though an application to set aside a sale on the ground that no notice had been served as required by O. XXI, r. 22 of the Civil Procedure Code, is one which cannot be made under the provisions of O. XXI, r. 90 of the Code, but must be one made under the provisions of s. 47 of the Code; still in order to justify a Court in setting aside a sale on the ground of the omission to serve a notice under O. XXI, r. 22, it must be proved that the omission to serve such notice has resulted in substantial injury to the owner of the property sold. *Lakshmi Charan Sen* v. *Sris Chandra Roy, 13 C. L. J. 162*, referred to. A second appeal lies from an order passed on appeal on an application to set aside a sale on the ground, that no notice had been served as required by O. XXI, r. 22 of the Code. KUMED BEWA *v.* PRASANNA KUMAR ROY (1912)
**I. L. R. 40 Calc. 45**

2. ——— *Rent decree—Sale—Encumbrances by way of maintenance grant—Portion of tenure in charge of the Encumbered Estates Act—Authorities exempted from sale by Commissioner—Effect of the order of exemption—Chota Nagpur Landlord and Tenant Procedure Act (Beng. I of 1879), s. 123—Chota Nagpur Tenancy Act (Beng. VI of 1908), s. 208—General Clauses Act (Beng. I of 1899), s. 8, cl (e)—Rent Recovery Act (Beng. VIII of 1865), ss. 4, 5 and 16.* When an application in execution of a rent decree was made for the sale of all the villages comprised in a

**EXECUTION OF DECREE**—*contd.*

tenure, but the Commissioner, for reasons sufficient in his opinion, directed the exemption of some of the villages from the sale: *Held*, that, the decree holder was not deprived of his right to execute his decree, which must be executed as a decree for rent against the unexempted portion of the tenure under the Bengal Rent Recovery Act of 1865. The effect of a sale of the unexempted portion would be to pass the property to the purchaser free of all encumbrances. *Dwarkanath Chuckerbutty* v. *Dhun Monee Chowdhrain, 15 W. R. 524, Sham Chand Mitter* v. *Juggut Chandra Sircar, 22 W. R. 541*, referred to. MADANMOHAN NATH SAHI DEO *v.* PROTAP UDAI NATH SAHI DEO (1912) . . . **I. L. R. 40 Calc. 623**

3. ——— *Mortgage-decree passed before the Code of 1908—Application for execution made after the Code of 1908 came into force, if governed by the new Code—Civil Procedure Code (Act V of 1908), ss. 1 (2), 48, 154—General Clauses Act (X of 1897), s. 6.* S. 48 of the new Code of Civil Procedure (Act V of 1908) governs an application for the execution of a mortgage-decree obtained even before that Code came into force. S. 154 of the new Code clearly contemplates a retrospective effect of the Code of an interference and with rights acquired under the old Code. S. 1, cl. (2) of the new Code afforded ample opportunity to all persons having rights under the old Code to enforce them before the new Code came into operation. *Kaunsilla* v. *Ishri Singh, I L.R. 32 All. 499*, not followed. BISSESWAR SONAMUT *v.* JASODA LALL CHOWDHRY (1913) **I. L. R. 40 Calc. 704**

4. ——— *Stay of execution of decree under appeal—Jurisdiction—Procedure.* The Court which passed a decree has no power to stay execution thereof whilst the decree is under appeal; neither has a Court which has executed its own decree awarding possession of immoveable property, power to restore to possession the party whom it has ejected. SATYA SHANKAR GHOSHAL *v.* MAHARAJ NARAIN SHEOPURI (1912) **I. L. R. 35 All. 119**

5. ——— *Limitation—Suit for sale on a mortgage—Decree payable by instalments—Civil Procedure Code, 1882, s. 258—Civil Procedure Code (1908), O. XXI, r. 2; O. XXXIV, r. 5—Limitation Act (IX of 1908), Sch I, Art. 181.* On a compromise in a suit for sale on a mortgage, a decree followed providing that the sum found due on the mortgage (Rs. 1,374), with interest at a certain rate, should be paid by instalments of Rs. 100 a year, along with the interest then due. Payments were to be made by the end of Jeth in each year, beginning with the Jeth 1957 Fasli (June 1900), and it was provided that, if default were made for three years in succession in the payments and interest, the decree-holder would be at liberty to recover at once the whole amount payable under the decree, that is, to apply for an order absolute for sale and execute the same. No payment was made in 1900 or 1901, but in June 1902, just before the end of Jeth 1959 Fasli,

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the judgment-debter paid up all that was due on account of the first three years. He made no payment in 1903, but in June, 1909, he paid up all that was due up to the end of Jeth 1960 Fasli (June, 1903). No payment was made in 1905, but in June, 1906, he paid the instalment and interest which he ought to have paid in Jeth 1961 Fasli (June, 1904). This payment was covered by the proviso to section 20 (*1*) of the Limitation Act. The only other payment made was a small sum on account of interest in July, 1909. The decree-holder applied for an order absolute for sale on the 3rd of August, 1909. *Held*, that the first three consecutive defaults were in 1905, 1906 and 1907, and that the decree-holders' application was in time applying Art. 181 of the first Schedule to the Indian Limitation Act, 1908. The following cases were referred to:—*Oudh Behari Lal* v. *Nageshar Lal, I. L. R. 13 All. 278, Kishan Singh* v. *Aman Singh, I. L. R. 17 All. 42, Roshan Singh* v. *Mata Din, I. L. R. 23 All. 36, Chunni Lal*, v. *Harnam Das, I. L. R. 20 All. 302, Shankar Prasad* v. *Jalpa Prasad, I. L. R 16 All. 371, Ajudhia* v. *Kunjal, I. L. R. 30 All 123, Mon Mohan Roy* v. *Durga Churn Gooee, I. L. R. 15 Calc. 502*, and *Kashiram* v. *Pandu, I. L. R. 27 Bom. 1.* BADRI NARAIN *v.* KUNJ BIHARI LAL (1913). **I. L. R. 35 All. 178**

**EXECUTION PROCEEDINGS.**

*See* MESNE PROFITS **I. L. R. 40 Calc. 56**

**EXECUTOR.**

*See* EXECUTOR, SALE BY. **I. L. R. 36 Mad. 575**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 95 . . . **I. L. R. 37 Bom 158**

**EXECUTOR, SALE BY.**

——— *Powers of an executor, happening to be guardian, effect of—Limitation Act (XV of 1877), Arts. 44 and 91—What must be proved before setting aside a sale by an executor—Onus—Executor under Probate and Administration Act (V of 1881)—Sale without Probate or Letters of Administration, validity of.* In the absence of proof that a sale by an executor was not a proper act of administration and was not required for the purpose of discharging debts of the deceased, and that the vendee was a *mala fide* purchaser having knowledge that the sale was not in due course of administration, the onus of proving all which lies on the party attacking the sale, the sale is valid and binding on all. The validity of a sale by one clothed with the powers of an executor must be tested with reference to the powers and duties of an executor; and it cannot be regarded or attacked as a sale by a guardian even i the executor actually happen to occupy the position of a guardian with reference to the plaintiff, a legatee under the will. Hence Article 44 of the Limitation Act (Act XV of 1877) is inapplicable to such a sale Nor is Article 91 applicable to the case as it cannot be said that the plaintiff, a legatee could not

**EXECUTOR, SALE BY**—*concld.*

succeed in recovering the property without setting aside the alienation, which was made neither by him nor by any one through whom he claims the property as heir, the validity of the sale depending on considerations aforesaid, with reference to the powers of an executor. An executor's title is derived from the will, and an executor under the probate and Administration Act (V of 1881), unlike an executor under the Indian Succession Act or the Hindu Wills Act, can clothe his vendee with full title, even without obtaining any Probate or Letters of Administration. *Sheik Moosa* v. *Sheik Essa, I. L. R. 8 Bom 241*, and *Mathuradas Lowji* v. *Goculdas Madhowji, I. L. R. 10 Bom 468*, followed *Sarat Chandra Banerjee* v. *Bhupendra nath Basu, I L R 25 Calc. 103*, considered and explained. Sections 2, 4 and 45 and the preamble and heading of Chapter II of Act V of 1881 considered. GANAPATHI AIYAR *v* SIVAMALAI GOUNDAN (1913) . . **I. L. R. 36 Mad. 575**

**EXORBITANT INTEREST.**

*See* CONTRACT ACT, s. 74.
**I. L. R. 36 Mad. 229**

**EX PARTE DECREE.**

*See* CIVIL PROCEDURE CODE 1908, O. V, RR. 1 AND 2; O. IX, R. 13.
**I. L. R. 35 All. 163**

**EXPERT IN HANDWRITING.**

*See* EVIDENCE **I. L. R. 36 Mad. 159**

**EXPROPRIETARY TENANT.**

*See* AGRA TENANCY ACT (II OF 1901), SS. 28, 29, 30 and 34
**I. L. R. 35 All. 123**

——— *Sale by one of several co-owners holding sir land of his undivided zamindari share—Vendor exproprietary tenant of all the co-owners and not merely of his vendee.* Where the owner of an undivided share in a *patti* sells his zamindari rights and becomes an exproprietary tenant of the *sir* land held by him he becomes the tenant as regards such land, not merely of his vendees but of all the co-sharers in the *patti*. DEBI PRASAD *v.* BHAGWAN DIN (1912)
**I. L. R. 35 All. 27**

## F

**FACTUM VALET.**

*See* HINDU LAW—MARRIAGE.
**I. L. R. 35 All. 265**

**FALSE CHARGE.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 250.
**I. L. R. 37 Bom. 376**

**FALSE CHARGE TO POLICE.**

*See* JURISDICTION OF CRIMINAL COURT.
**I. L. R. 40 Calc. 360**

**FALSIFICATION OF ACCOUNTS.**

*See* CHARGE . **I. L. R. 40 Calc. 318**

**FAMILY PURPOSE.**

*See* MORTGAGE . **I. L. R. 40 Calc. 342**

**FAMILY SETTLEMENT.**

*See* EVIDENCE . **I. L. R. 35 All. 502**

**FEMALE MEMBERS.**

*See* MORTGAGE . **I. L. R. 40 Calc. 378**

**FERRY.**

*See* GENERAL CLAUSES ACT (X OF 1897) S. 3(25) . . **I. L. R. 35 All. 156**

**FINAL DISCHARGE.**

*See* PROVINCIAL INSOLVENCY ACT (III OF 1907) . . **I. L. R. 36 Mad. 402**

**FIRE INSURANCE.**

*See* INSURANCE . **I. L. R. 37 Bom. 183**

**FIRM.**

*See* FOREIGN JUDGMENT.
**I. L. R. 36 Mad. 414**

**FISH.**

——— **capture of, in irrigation tank—**

*See* THEFT . **I. L. R. 36 Mad. 472**

**FISHERY—**

——— *Small rivers, tidal but not navigable, right of fishery in.* In Bengal the rights of fishery in small rivers which are tidal but not navigable, belong to the proprietors through whose estates they run. Navigability does not necessarily follow tidality, and the two terms cannot be regarded as equivalent. SRIMANTU BAGDI *v.* BHAGWAN JALIA (1913) . **17 C. W. N. 1108**

**FORECLOSURE.**

——— **suit for—**

*See* LIMITATION ACT (IX OF 1908) S. 20,
**I. L. R. 35 All. 378**

**FOREIGN DECREE.**

*See* FOREIGN JUDGMENT.
**I. L. R. 36 Mad. 414**

**FOREIGN DOMICILE.**

*See* DIVORCE . **I L. R. 40 Calc. 215**

**FOREIGN JUDGMENT.**

——— *Suit on—Foreign Courts decree—Decree for money against "firm"—Some partners not served in Foreign Court—No personal liability—Foreign decree enforceable only against partnership property of the partners.* The general rule of law, undoubtedly is that in suits where one person is allowed to represent others as defendants in a representative capacity, any decree passed can bind those others only with respect of the property of those others which he can in law represent and no personal decree can be passed against them,

**FOREIGN JUDGMENT**—*concld.*

although the parties on record *eo nomine* may be made personally liable. The extent of the rule applicable to a case of defendants sued as partners is laid down in O. XXI, rule 50, Civil Procedure Code A firm was sued in Singapore in the firm's name but only one of the partners was served and a decree was passed against "defendants" for a certain sum On the judgment of the Singapore Court a suit was filed in British India against the individual partners of the firm and the representatives of a deceased partner. *Held*, that the partners who were not served in the Singapore suit were not personally liable and that no personal decree can be passed against them in the present suit, but that their partnership property, if any, is liable for the decree of the Singapore Court. *Per* CURIAM. The same is the principle applied in suits against an Hindu family represented by its manager and in cases covered by Order I, rule 8, Civil Procedure Code, the result being that an injunction in a decree in the latter class of cases is not binding on those who are not actually parties to the record. *Sadagopachari* v. *Krishnamachari, I. L R. 12 Mad. 356*, and *Srinivasa Ayyangar v. Arayar Srinivasa Ayyangai, I.L R. 33 Mad. 483*, referred to. SAHIB THAMBI *v* HAMID (1913) . . . . **I. L. R 36 Mad. 414**

**FORFEITURE.**

*See* LANDLORD AND TENANT.
**I. L. R. 40 Calc. 870**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 111.
**I. L. R. 35 All. 145**

——— of land—

*See* LAND REVENUE CODE (BOM. ACT V OF 1879, AS AMENDED BY BOM. ACT VI OF 1901), S 56.
**I. L. R. 37 Bom. 692**

**FORGERY.**

*See* PENAL CODE (ACT XLV OF 1860). SS. 463, 467 . **I. L. R. 37 Bom. 666**

**FRAUD.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 95
**I. L. R. 37 Bom. 158**

——— *Fraud and collusion of predecessors in title—Parties by descent precluded from setting up fraud.* The property in dispute belonged originally to Mahomedsahib, who in 1829 gave it to his wife Sabinibibi as dower. Sabinibibi sold it in 1863 to Sardarkhan, one of the two brothers of her daughter-in-law Fatmabibi. Sardarkhan died in 1873, and in 1875 his brother Mahomedkhan gave it in gift to Shabusaheb, one of the sons of Fatmabibi. Subsequently on Shabusaheb's death, his creditor sued his son and obtained a decree against him. In execution the property was sold and was purchased at auction by one Ramchandra who having transferred his right to the plaintiff, her agent brought the present suit against Shabusaheb's sister and his two brothers

**FRAUD**—*concld*

to recover possession. *Held*, that the plaintiff was entitled to succeed. If all the said transactions were genuine, legal and valid, the defendants had no case at all, and if they were, as alleged by the defendants, fraudulent and collusive, the defendants were precluded, as parties by descent to the alleged fraud, from setting up their own iniquity to avoid the legal consequences of those transactions *Doe, dem. Roberts* v. *Roberts*, 2 B. & A. 367, followed SAYAD NAHANNU *v.* SABINBIBI (1911) . . . **I. L. R. 37 Bom. 217**

**FRESH PROCEEDINGS.**

*See* JURISDICTION OF CRIMINAL COURT.
**I. L. R. 40 Calc. 71**

## G

**GAMBLING.**

*See* PREVENTION OF GAMBLING ACT (BOM. IV OF 1887), S. 4, CLS. (*a*), (*c*)
**I. L. R. 37 Bom. 651**

*See* PUBLIC GAMBLING ACT (III OF 1867) SS. 3 AND 4 . **I. L. R. 35 All. 1**

——— *Bombay Prevention of Gambling Act (IV of 1887), ss. 5, 6 and 7—Gaming in a common gaming-house—Search of the house without warrant issued under s. 6—Presumption under s. 7 cannot arise in search conducted without warrant under s. 6.* The Deputy Commissioner of Police in Bombay, who was invested by the Commissioner of Police with power to issue warrants under s. 6 of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), on receipt of certain information on oath, personally raided a house and searched it, without issuing a warrant under the provisions of s. 6. The accused seventeen in number were not seen gaming, but there were found three packs of playing-cards and small coin lying near them. The accused were tried for the offence of gaming in a common gaming-house; and the trying Magistrate applying to them the presumption raised by s. 7 of the Act, convicted them of an offence under s. 6. The accused applied to the High Court.—*Held*, that the presumption under s. 7 that the mere finding of cards and dice was to be taken as evidence that the house in which they were found was used as a common gaming-house, could only arise when the house is entered under warrant issued under s. 6 of the Act. *Held*, accordingly, that the accused should be acquitted and discharged. *Emperor* v. *Fernad, I. L. R. 31 Bom. 438*, considered. EMPEROR *v.* JAFFUR MAHOMED (1912).
**I. L. R. 37 Bom. 402**

**GAMBLING DEBT.**

*See* EVIDENCE ACT (I OF 1872), S. 92
**I. L. R. 35 All. 558**

**GANJAM AND VIZAGAPATAM AGENCY RULES.**

——— *Agent's order under s. XVIII—Maintainability of petition to High Court under Rule XX—Interference of High Court in proper cases—S. 244, bar by—Who can set up.* A petition lies to the High Court under rule XX of the Ganjam and Vizagapatam Agency Rules, even though the Agent acted under Rule XVIII in dismissing an appeal. *Jagannadha* v *Gopanna, I L.R. 16 Mad 229*, dissented from. An order of the Agent summarily dismissing an appeal is a decree as it disposes of the rights of the parties, and under Rule XX the High Court may in a proper case (as here, where the Agent gives no reasons for dismissal) direct the Agent to review his judgment. A person who was not a party to a previous suit cannot set up the effect of an order in execution in that suit as a bar to a suit against him. *Quære*: Whether when s 244, Civil Procedure Code, does not apply to Agency Tracts, the principle of that section applies. VIKRAMA DEO *v.* RAGHUNATHA PATRO (1913) I. L. R. 36 Mad. 128

**GENERAL CLAUSES ACT (X OF 1897).**

——— s. 3 (*25*)—

——— *Provincial Small Cause Courts Act (IX of 1887) Sch. II, Art. 13—Court of Small Causes—Jurisdiction—Ferry—"Immovable property" —Suit to recover tolls alleged to be due to plaintiff as lessee of a ferry. Held,* that the right to a ferry is a benefit which arises out of land and comes within the definition of immovable property under s. 3 (*25*) of the General Clauses Act, 1897, and a suit by a lessee of a ferry to levy a toll alleged to be recoverable by him as such lessee, falls under, Art. 13 of the second Schedule to the Provincial Small Cause Courts Act and is therefore not cognizable by that Court. *Gokal Chand* v. *Lal Chand, Punj. Rec., 1897, Case No. 48, p. 215*, and *Desa Singh* v. *Narain Das, Punj. Rec., 1898, Case No. 80, p 278*, approved. ABDUL HAMID KHAN *v.* BABU LAL (1913) I. L. R. 35 All. 156

——— s. 6—

*See* EXECUTION OF DECREE. I. L. R. 40 Calc. 704

*See* HUSBAND AND WIFE. I. L. R. 37 Bom. 393

**GENERAL CLAUSES ACT (BENG. I OF 1899).**

——— s. 8, cl. (e)—

*See* EXECUTION OF DECREE. I. L. R. 40 Calc. 623

**GHATWALI TENURE.**

*See* ADVERSE POSSESSION. I. L. R. 40 Calc. 173

**GIFT.**

*See* NAIKINS . I. L. R. 37 Bom. 116

*See* REGISTRATION I. L. R 35 All. 3

**GIFT**—*concld.*

——— absolute, to son—

*See* HINDU LAW—WILL. I. L. R. 40 Calc. 274

**GIFT-OVER.**

*See* WILL . I. L. R. 40 Calc. 192

**GOVERNMENT.**

*See* BHAGDARI VILLAGE. I. L. R. 37 Bom. 87

*See* LAND ACQUISITION ACT (I OF 1894), SS. 3 (*b*), 11, AND 31 (*1*) AND (*2*). I. L. R. 37 Bom 76

——— share of—

*See* LAND ACQUISITION—COMPENSATION. I. L. R 40 Calc. 64

——— suit against—

*See* ABKARI ACT (BOM. ACT V OF 1878), SS. 32, 67 . I. L. R. 37 Bom. 101

**GOVERNMENT CIRCULAR.**

——— effect of—

*See* CRIMINAL REVISION. I. L. R. 40 Calc. 41

**GOVERNMENT OFFICER.**

——— suit against—

*See* COURT OF WARDS ACT (BOM. ACT I OF 1905), S. 3 (*c*). I. L. R. 37 Bom. 313

**GOVERNMENT OF INDIA ACT, 1858 (21 & 22 Vict., c. 106).**

——— ss. 65 to 67—

*See* JURISDICTION OF CIVIL COURT. I. L. R. 40 Calc. 391

**GRANT.**

*See* VRITTI . I. L R. 37 Bom. 409

——— Ekrarnama—*Lease or License—Construction—Practice.* Where a grant involved a transfer of an interest in immoveable property, the grantees were in the position of tenants; if it did not, they were at least in the position of a licensees Where in an on *ekrarnama* there were clauses by which the grantors reserved to themselves certain rights for limited purposes, but which, properly construed, gave the grantees exclusive possession of the property, the grant amounted to a lease. To give exclusive possession there need not be express words; it is sufficient if the nature of the acts to be done by the grantee requires that he should have exclusive possession. *Roads* v *The Overseers of Trumpington, L. R. 6 Q. B. 56*, referred to. Distinction between a license and a lease lies in the fact that in the case of license there is no transfer of interest in land, whereas in the case of a lease there is transfer of

**GRANT**—*concld.*

such interest. Upon the construction of the instrument as a whole: *Held*, that the paramount intention of the parties was to create a present demise, and that the grantee was in the position of a tenant. MOHIPAL SINGH *v.* LALJI SINGH (1912)
**17 C. W. N. 166**

**GRANTOR AND GRANTEE.**

*See* ADVERSE POSSESSION.
**I. L. R. 40 Calc. 173**

**GRAVEYARD.**

*See* MAHOMEDAN LAW—ENDOWMENT.
**I. L. R. 40 Calc. 297**

——— *Trespass—Erection of a shed over a visible grave in a disused private grave-yard—Penal Code (Act XLV of 1860), s. 297.* The erection of a shed over a visible grave belonging to the complainant's family in a disused graveyard, claimed to be private property of the trespasser, with the knowledge that the feelings of the complainant would be likely to be thereby wounded, is an offence under s. 297 of the Penal Code. *Per* RICHARDSON. J. The word "trespass" in s. 297 has not the same meaning as "criminal trespass" in s. 441 of the Code, but implies any violent or injurious act committed in the place, and with the knowledge or intent, defined in s. 297. JHULAN SAIN *v.* EMPEROR (1913)
**I. L. R. 40 Calc. 548**

**GRIEVOUS HURT.**

*See* PENAL CODE (ACT XLV OF 1860), SS. 300, 325. . **I. L. R. 35 All. 329**

**GROUND-RENT.**

——— **exemption from, to be express—**
*See* RIGHT OF SUIT.
**I. L. R. 36 Mad. 373**

**GROUNDS OF REVISION.**

*See* CRIMINAL REVISION.
**I. L. R. 40 Calc. 41**

**GROVE LAND.**

*See* AGRA TENANCY ACT (II OF 1901) S. 4; CH. X **I. L. R. 35 All. 200**

**GUARDIAN.**

*See* HINDU LAW—WILL.
**I. L. R. 37 Bom. 18**

**GUARDIAN AD LITEM.**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 35 All. 571**

**GUARDIAN AND MINOR.**

*See* GUARDIANS AND WARDS ACT (VIII OF 1890)

*See* MAJORITY ACT (IX OF 1875), S. 3
**I. L. R. 35 All. 150**

**GUARDIANS AND WARDS ACT (VIII OF 1890).**

——— *Jurisdiction of District Court—No power to order payment of money for minor's marriage by person not guardian —Concurrent jurisdictions when order passed under one jurisdiction can be taken to be passed under another.* The Guardians and Wards Act (VIII of 1890) does not give the District Court any power or authority over persons other than the guardian or the minor except in so far as it deals with the question as to who is the proper person to be appointed guardian, or whether a particular guardian should be removed or not and for the purpose of restoring the ward to the custody of the guardian. Under the Guardian and Wards Act no order can be passed directing a person not a guardian to pay a sum of money for the purposes of a minor's marriage. Where a Judge passing such an order under the Guardians and Wards Act, could have passed a similar order as a Judge of a Court of ordinary civil jurisdiction, the order cannot be treated as a decree in a suit. The two jurisdictions are wholly distinct though exerciseable by the same official. *Sadasiva Pillai* v. *Ramalinga Pillai, L. R. 2 I.A. 219*, and *Ledgard* v. *Bull, I.L.R.* 9 *All. 191*, distinguished. SOMAKKA v. RAMIAH. (1913) . . . . **I. L. R. 36 Mad. 39**

——— **s. 29**— *Guardian and Minor—Certificated guardian —Sale —Powers of certificated guardian different from those of a guardian under the general rule of law.* The powers of a certificated guardian are regulated and defined by the Guardians and Wards Act, and the rule of law, that, there being no mutuality in a contract to which a minor was a party, it could not be enforced by him, does not apply to a contract for the sale of immovable property entered into by the certificated guardian of a minor with the sanction of the Court; such a contract is valid and a suit for damages for breach of the contract will lie on behalf of the minor. *Mir Sarwarjan* v *Fakhruddin Mahomed Chawdhuri, I. L. R. 39 Calc. 232*, distinguished. BABU RAM *v.* SAID-UN-NISSA, (1913)
**I. L. R. 35 All. 499**

——— **s. 35**—*Act XL of 1858—District Judge's power to take security bond from manager—Assignment of bond by District Judge—Suit against representatives of a deceased manager in respect of liability incurred by him, if lies.* It was competent to a District Judge acting under Act XL of 1858 to take a security bond in his own favour for the due discharge of his duties by a manager appointed by him. Such a bond can be validly assigned by the District Judge under s. 35 read with s. 2 (2) of the Guardians and Wards Act. BAHADUR SINGH *v.* BASUNTA KUMAR ROY (1913) . . . . . **17 C. W. N. 695**

——— **ss. 47, 48, 50**—*Application to be appointed guardian of minor, dismissed for default—Second application, if lies—Application refused—Appeal, if lies—Girl, infant, who has nearly attained majority—Marriage, consent of infant to, if necessary —Guardian of person, if should be appointed to enable giving her in marriage.* Where an applica-

**GUARDIAN AND WARDS ACT (VIII OF 1890)—*concld.***

**——— s. 47—*concld.***

tion for appointment as guardian of an infant was dismissed for non-appearance, and an application for a re-hearing was refused: *Held*, that a second substantive application for appointment as a guardian is maintainable. Where the District Judge refused such an application as not maintainable: *Held*, that an appeal lies to the High Court against the order. Where a Mahomedan, after having divorced his wife, applied to be appointed guardian of his infant daughter, who was very close upon her majority, with the object of her giving her away in marriage to a suitable bridegroom: *Held*, that, at her age, the consent of the girl to the marriage was required, and the application should not be proceeded with. AHMAD ALI *v.* RAISUNNESSA (1913) **17 C. W. N. 429**

**GUJARAT TALUKDARS ACT (BOM. VI OF 1888).**

**——— s. 31—*Incumbrance created by a Talukdar—Adverse possession for more than twelve years after the death of the Talukdar—Title—Limitation.*** A person claiming as an incumbrancer for more than twelve years from the death of a Talukdar, can acquire title by adverse possession. The incumbrance which is claimed by virtue of adverse possession since the death of a Talukdar would not fall within s. 31 of the Gujarat Talukdars' Act (Bom. Act VI of 1888) but would be an incumbrance arising from the operation of the law of limitation. TALUKDARI SETTLEMENT OFFICER, GUJARAT *v.* RIKHAVDAS PARSHOTTAMDAS (1912) . . . **I. L. R. 37 Bom. 380**

**GUN.**

*See* ARMS ACT (XI OF 1878), SS. 13, 19 (*e*) **I. L. R. 37 Bom. 181**

## H

**HALF SISTER'S SON OF WIDOW.**

*See* HINDU LAW—STRIDHAN **I. L. R 40 Calc. 82**

**HEREDITARY OFFICE.**

*See* VRITTI . **I. L. R. 37 Bom. 409**

**HEREDITARY OFFICES ACT (BOM. III OF 1874).**

**——— ss. 11, 11 (A)—*Revenue Jurisdiction Act (X of 1876), s. 4 (a)—Deshmukhi Vatan—Mirasi lease and mortgage by the Vatandar—Death of the Vatandar—Collector's order declaring the alienation null and void and directing the land to be restored to the representative of the deceased Vatandar—Adverse possession—Jurisdiction of Civil Courts.*** A Deshmukhi Vatandar executed a *mirasi* lease and

**HEREDITARY OFFICES ACT (BOM. III OF 1874)—*concld.***

**——— s. 11—*concld.***

mortgage of certain vatan land to the plaintiff in the year 1877 and died in 1892. Before the expiry of twelve years from his death, his legal representative made an application to the Assistant Collector for an order for possession on the ground that the land was Deshmukhi Vatan. In February 1905 the Assistant Collector passed an order which declared the alienation to be null and void under section 11 of the Hereditary Offices Act (Bom. Act III of 1874) and directed the land to be restored to the applicant. Thereupon, the plaintiff brought the present suit in the year 1906 against the legal representative (applicant before the Assistant Collector) and others for a perpetual injunction restraining the defendants from recovering possession of the land. The defendants contended that the suit was not maintainable by reason of section 4 (*a*) of the Revenue Jurisdiction Act (X of 1876). *Held*, that the order passed by the Assistant Collector directing the plaintiff to restore possession to the defendant being unauthorised under section 11 of the Hereditary Offices Act (Bom Act III of 1876), the Revenue Jurisdiction Act (X of 1876) was no bar to the maintenance of the suit. *Held*, further, that the mere fact that an application was made by the defendant to the Assistant Collector within twelve years of the death of the alienor, did not interrupt plaintiff's adverse possession against the defendants. MAGANCHAND *v.* VITHALRAV (1912) . . . . **I. L. R. 37 Bom. 37**

**HEREDITARY OFFICES ACT, (BOM. V OF 1886).**

**——— s. 2—**

*See* HINDU LAW **I. L. R. 37 Bom. 598**

**HEREDITARY VILLAGE OFFICES ACT (MAD. III OF 1895).**

*See* PENSIONS ACT, S. 4. **I. L. R. 36 Mad. 559**

**HIGH COURT.**

*See* LAND ACQUISITION ACT (I OF 1894), S. 54 . . **I. L. R 37 Bom. 506**

**——— disciplinary jurisdiction of—**

*See* BOMBAY REGULATION (II OF 1827), S. 56 . . **I. L. R. 37 Bom. 354**

**——— superintendence and control by—**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 3, 115 **I. L. R. 37 Bom. 114**

**HIGH COURT, JURISDICTION OF.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908) O. XLVI, R. 1 ; S. 141 **I. L. R. 36 Mad. 16**

**HIGH COURT, JURISDICTION OF—** *contd.*

*See* JURISDICTION OF HIGH COURT.

*See* LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT, S. 12.

**I. L. R. 37 Bom. 494**

1. ——— *Order under s 476 of the Criminal Procedure Code by Settlement Officer—Whether civil appellate or criminal appellate side can revise—Criminal Procedure Code (Act V of 1898), s. 439—Civil Procedure Code (Act V of 1908), s. 115—High Courts Act (24 & 25 Vict c. 104), ss. 14 and 15.* In the case of an order passed by a Civil or Revenue Court under s. 476 of the Criminal Procedure Code, (i) S. 439 of the Criminal Procedure Code has no application; (ii) The High Court can exercise the powers vested in it by s. 115 of the Civil Procedure Code of s 15 of the High Courts Act, and (iii) The Bench of the High Court exercising criminal jurisdiction cannot, as such, deal with the matter on revision, but the Judges composing that Bench may do so, if authorised by the Chief Justice under s. 14 of the High Court Act. *Kali Prasad Chatterjee* v. *Bhuban Mohini Dasi, 8 C. W. N. 73,* and *Emperor* v. *Gopal Barik, I. L. R. 34 Calc. 42,* considered and approved of to a certain extent EMPEROR *v* HAR PRASAD DAS (1913) . . . **I. L. R. 40 Calc. 477**

2. ——— *Chota Nagpur Tenancy Act (Beng. VI of 1908), s. 27—Application for enhancement of rent—Jurisdiction of the High Court to set aside an order of Deputy Commissioner, passed without jurisdiction, on appeal from an order of Deputy Collector—Judicial proceeding.* Proceedings on applications for enhancement of rent under s. 27 the Chota Nagpur Tenancy Act are judicial proceedings, and Deputy Commissioners in the performance of their judicial duties under the Act are Courts subject to the appellate jurisdiction of the High Court. The High Court has jurisdiction to interfere in cases where the Courts of Collectors have either exceeded the jurisdiction or failed or refused to exercise the jurisdiction vested in them by the Chota Nagpur Tenancy Act: *Chartan Patgosi Mahapatra v. Kunja Behari Patnaik, I. L. R. 38 Calc. 832,* referred to. KARTIK CHANDRA OJHA *v.* GORA CHAND MAHTO (1913) **I. L. R. 40 Calc. 518**

3. ——— *Stay of Execution—Inherent powers of Court—Special leave to appeal to the Privy Council—Civil Procedure Code (Act V of 1908) ss. 112 and 151; O. XLI. r. 5 (2)—Letters Patent, 1865, cl. 36.* The High Court is competent to make an order for stay of proceedings in execution of its decree in view of an application by the Judgment-debtor to the Judicial Committee for special leave to appeal to His Majesty in Council. *Hurro Chandar Roy Chowdhry* v. *Shoorodhonee Debia, 9 W. R. 402, Panchanan Singha Roy v. Dwarka Nath Roy, 3 C. L. J. 29, Hukum Chand Bord* v. *Kamalanand Singh, I. L. R. 33 Calc. 927; 3 C. L. J. 67, Mahomed Wahiduddin* v. *Hakiman, I. L. R. 25 Calc. 757, Tara Pado Ghose* v. *Kamini Dassi, I. L. R. 29 Calc. 644, Mahadeo* v. *Budhai Ram I L R. 26 All. 358, Gajju* v. *King Emperor, 2 All. L. J. 173, Brij Coomaree* v. *Ramnick Dass, 5 C W. N. 781, Nityamoni Dasi* v *Madhu Sudan Sen, I. L. R. 38 Calc 335, L. R. 38 I. A 74,* referred to. NANDA KISHORE SINGH *v.* RAM GOLAM SAHU (1912) **I. L. R. 40 Calc. 955**

**HIGH COURT, JURISDICTION OF—** *concld.*

**HIGH COURT, BOMBAY, APPELLATE SIDE RULES.**

——— **Rule 65—**

*See* BOMBAY REGULATION II OF 1827, S. 52 . . **I. L. R. 37 Bom. 303**

——— **Rule 725—**

*See* CIVIL PROCEDURE CODE 1908, O XLI, R. 10, AND S. 129 **I. L. R. 37 Bom. 572**

**HIGH COURT, BOMBAY, CIVIL CIRCULAR.**

——— **51—**

*See* CIVIL PROCEDURE CODE, 1908, O. XLI, R. 11. **I. L. R. 37 Bom. 610**

——— **96, cl.** *(l)—Decree on mortgage—Mortgage executed by father and two sons for family purpose—Suit against the father and his sons—Decree—Execution against father and sons—Proclamation of sale putting up the right, title and interest of the father and sons for sale—A condition of sale in terms of cl. (l)—Grandsons who were not parties to the suit or execution proceedings not bound by the sale.* G. and two out of his six sons, forming an undivided family, mortgaged family-property to plaintiffs' father for family purposes. The plaintiffs brought a suit upon the mortgage against G., five of his sons and three grandsons by his sixth son who had died. The suit was decreed in plaintiffs' favour. In execution of the decree, the mortgaged property was put up to sale and purchased by the plaintiffs at the Court-sale. In the proclamation of sale the right, title and interest of the defendants to the suit was mentioned; and one of the conditions of sale was in the terms of clause (*l*) to High Court Civil Circular 96. The plaintiffs were put in possession of the property. The defendants Nos. 7 to 14, 16 and 17 to 19, the grandsons of G. by five of his sons who were not parties to the mortgage suit or to the execution proceedings, having obstructed the plaintiffs in their possession, to plaintiffs brought the present suit to establish their title against those defendants. The defendants contended that their right to the property did not pass at the sale to the plaintiffs and they were not bound by the decree to which they were not parties. The lower Courts disallowed the contention on the ground that the defendants were represented in the suit by their fathers and consequently their rights passed at the sale to the plaintiffs. On second appeal :— *Held,* that the defendants' interests in the mortgaged property did not pass to the plaintiffs at the Court-sales inasmuch as by an express de-

**HIGH COURT, BOMBAY, CIVIL CIRCULAR**—*concld.*

claration made by the selling Court and accepted by the purchasing plaintiffs, those interests were formally and deliberately excluded from the sale. TIMMAPPA *v.* NARSINHA TIMAYA (1913)
**I. L. R. 37 Bom. 631**

**HIGH COURTS ACT (24 & 25 VICT. C. 104).**

**——— ss. 14, 15—**

*See* HIGH COURT, JURISDICTION OF
**I. L. R. 40 Calc. 477**

**HINDU JOINT FAMILY.**

*See* CENTRAL PROVINCES GOVERNMENT WARDS ACT, s. 18
**I. L. R. 40 Calc. 784**

**HINDU LAW.**


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*See* U. P. LAND REVENUE ACT (III OF 1901), ss. 111, 112 AND 233 (*k*)
**I. L. R. 35 All. 126.**

**HINDU LAW—ADOPTION.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 118 **I. L. R. 37 Bom. 513**

1. ——— *Ahirs—Validity of adoption after marriage of adopted son. Held,* that amongst Ahirs the adoption of son after his marriage has taken place is not permissible. *Pichuvayyan* v. *Subbayyan, I. L. R. 13 Mad, 128,* followed. JHUNKA PRASAD *v.* NATHU (1913)
**I. L. R. 35 All. 263**

2. ——— *Widow—Implied prohibition in the will to adopt—absolute bequest to daughters—Hereditary Offices Act (Bom. Act III of 1874, amended by Bom. Act of 1886)—Amendment of the Act excluding daughters from succeeding to vatan lands—Adoption of a son of the daughter, by the widow—Adoption invalid—Will—Construction.* A testator by his will dated the 9th March 1885 bequeated his property, which for the most part consisted of vatan lands, to his

**HINDU LAW—ADOPTION**—*contd.*

two daughters "in perpetuity." He enjoined his wife not to make over the property to anybody "except to my daughters." The daughters were authorised only to relinquish their right in favour of each other but not to anybody else. In 1886, the Bombay Hereditary Offices Act (III of 1874) was amended by the Bombay Act V of 1886, whereby the female members of a vatan were postponed to male members in the matter of succession. The testator's widow thereupon adopted defendant No. 1 who was a son of one of the daughters. The plaintiffs, the reversioners of the testator, filed a suit to obtain a declaration that the adoption of defendant No. 1 was invalid, alleging that there was in the will an implied prohibition forbidding the widow to adopt It was contended in defence that the right of the widow to make the adoption was not taken away by anything expressed in the will. *Held,* that the adoption was invalid, inasmuch as it could not be upheld without giving the go-by to the testator's expressed wishes. In the will, not only was there a complete bequest of the whole estate to the daughters, but the widow was in terms prohibited from disposing of the property to anyone except the daughters. *The Collector of Madura v. Mootoo Ramalinga Sathupathy, 12 Moo. I. A. 397,* distinguished. MALGAUD PARAGAUDA *v.* BABAJI DATTU (1912)
**I. L. R. 37 Bom. 107**

3. ——— *Widow of the last vatandar—Adoption by the widow—Death of the adopted son unmarried—Second adoption by the adopted son—Vesting of the property in the male member of the vatandar family—Divesting of estate by adoption—Bombay Hereditary Offices Act (Bom. Act V of 1886), s. 2—Second adoption not valid.* On the death of the last vatandar, his widow went into possession of the vatan property. She adopted a son who died in 1902 unmarried. In 1904, she adopted another boy. The plaintiff, a reversioner, sued in 1909, for a declaration that he was the vatandar and to recover possession of the vatan property. *Held,* that the widow could not make a second adoption ; for the property was, on the death of her first adopted son, vested in the plaintiff, a male member of the family, and it could not subsequently be divested by any adoption made by her. BHIMABAI *v.* TAYAPPA MURARRAO (1913)
**I. L. R. 37 Bom. 598**

4. ——— *Settlement of immoveable property by adopting widow in favour of her daughter—Settlement assented to by the natural father of the adopted boy—Attainment of majority by the adopted son—Repudiation of the Settlement—Settlement not enforceable.* A settlement of immoveable property by an adopting widow in favour of her daughter to take effect upon the daughter attaining majority, assented to by the natural father of the adopted boy at the time of adoption, cannot be enforced by the daughter against the adopted son who repudiated it on majority. VYASACHARYA *v.* VENKUBAI (1912)
**I. L. R. 37 Bom. 251**

## HINDU LAW—ADOPTION—*contd.*

5. ——————— *Adoption, validity of—Sapinda, consent of, obtained for consideration—Evidence Act (I of 1872), s. 32, sub-ss. 3 and 5,—Admissibility of statement made by deceased person.* Where under the Hindu Law, the consent of a sapinda is required to validate an adoption by a widow and that consent is obtained in exchange for a valuable consideration the transaction will vitiate the adoption. *Rami Reddi* v. *Rangamma, 11 Mad. L. J. 20,* followed. *Srinivasa Ayyangar* v. *Rangasami Ayyangar, I L.R. 30 Mad. 450,* distinguished. A statement made by a deceased sapinda admitting that he had received sum of money in connection with an adoption was sought to be proved in order to invalidate the adoption :—*Held,* that the statement was admissible under section 32, sub-s. (3) of the Evidence Act, it being a statement made against his pecuniary or proprietary interest. *Held,* also, that the statement was admissible under section 32, sub-s 5, as it related to the existence of a relationship; and this notwithstanding that the relationship was not in dispute at the time when the statement was made. DANAKOTI AMMAL *v.* BALASUNDARA MUDALIAR. (1913) **I. L. R. 36 Mad. 19**

6. ——————— *Adoption by mother with the assent of a deceased son—Objection by existing sapinda—Invalidity of adoption.* A consent previously obtained from a deceased sapinda cannot be efficacious to validate an adoption which is not approved of or objected to by the persons who are the nearest sapindas at the time the adoption is actually made. Strange's Hindu Law, Vol. I, p. 80, and Sircai on adoption, p. 255, not followed. *Per* CURIAM : There is a distinction between the case of an adoption in an undivided family and that in a divided family, as regards the persons whose assent is sufficient. *The Collector of Madura* v. *Moottoo Ramalinga Sathupathy, 12 Moo. I. A. 396, 442, Vellanki Venkata Krishan Rao* v. *Venkata Rama Lakshmi, I.L.R. 1 Mad. 174,* and *Subrahmanyam* v. *Venkamma, I.L.R. 26 Mad. 627, 635,* referred to. MAMI *v.* SUBBARAYAR (1913) **I. L. R. 36 Mad. 145**

7. ——————— *Authority to adopt given to two widows—Construction—Authority whether several or joint—Exercise of power by survivor—Restriction as to class of boys—Powers, how to be construed—Power given by a Hindu, how to be construed when ambiguous.* Where a testator by his will provided ; "Permission will be granted to my two wives to adopt a boy to arrange to offer water and funeral oblations to me, the adopted boy will have to be taken from amongst my near representatives but my wives will adopt whomsoever they would select," and on the death of one of the widows, the surviving widow adopted her brother's son: *Held,* that the testator intended to confer authority to adopt by the will itself and not by a separate instrument. That the authority to adopt was conferred on the widows severally and not jointly, and the surviving widow could lawfully exercise the power of adoption conferred by the Will in construing a document of this description the Court would consider that the person giving the authority intended his widows to do that which the law allowed and not to do something which was, if not absolutely illegal, very unusual and not practised amongst Hindus. *Quære*: Whether when an authority to adopt is in fact conferred on two widows jointly, adoption by the survivor of them alone is valid. *Venkata* v. *Rangaya, I. L. R. 29 Mad. 437, 444,* doubted. That the expression "from amongst my near representatives" being strictly speaking meaningless, no restriction as to the class of boys within which the choice was to be made was to be read into it. That it was not intended that the selection was to be made by the widows concurrently. Where the general intention of a Hindu to be represented by an adopted son is clear, effect should be given to such intention, if it is possible to do so without contravening the law, and the Court will not be astute to defeat the intenton of the testator. *Surja Narayan* v. *Venkata Ramana, I. L. R. 26 Mad. 681.* All powers are to be liberally construed in equity in furtherance of the purpose for which they were created. SARADA PROSAD PAL *v.* RAMA PATI PAL (1912) **17 C. W. N. 319**

## HINDU LAW—ALIENATION.

1. ——————— *Alienation—Custom of agriculturists in the Punjab—Ancestral land—Power of father to alienate—Necessity—"Just debts"—Burden of proof—Debts of proprietor incurred by reckless extravagance and for illegal or immoral purposes.* In a suit by the respondents to have set aside an alienation of part of the family property made by their father in favour of the appellant, alleging that by the custom of agriculturists in the Punjab he was not competent to sell ancestral land without necessity, that there had been no necessity for the sale, that their father was a debauchee and an extravagant person, and that the debts for which the sale was made were incurred for immoral and illegal purposes, the appellant did not deny the custom though he traversed all the other allegations in the plaint, and contended that, the alienation having been made for their father's antecedent debts, it was for the respondents to show that the debts were contracted for illegal or immoral purposes. There were concurrent findings by the Courts below that the respondents' father was recklessly extravagant and did not know how to manage his affairs properly, and that certain specific debts were "just debts," and others were not: *Held* (affirming the decision of the Chief Court of the Punjab), that the custom set up, not being disputed, was applicable to the case, that the payment of a "just debt" by the male proprietor of lands to which the custom applied was a necessity for which he could validly alienate ancestral property, and that the respondents were entitled to possession of the property sued for on re-payment to the appellant of such part of the purchase money as both Courts concurrently found to be just debts, the

**HINDU LAW—ALIENATION**—*contd*

payment of which was a necessity. The ruling in *Devi Ditta v. Saudagar Singh*, (1900) Punjab Rec. No. 65, that a "just debt" means "a debt which is actually due, and is not immoral, illegal or opposed to public policy, and has not been contracted as an act of reckless extravagance or of wanton waste, or with the intention of destroying the interests of the reversioners," was approved of by their Lordships of the Judicial Committee. KIRPAL SINGH *v.* BALWANT SINGH (1912)

**I. L. R. 40 Calc. 288**

**2.** ——— *Mortgage by widow of part of the estate—Legal necessity—Presumption—Reversioner.* Alienation by way of mortgage by Hindu widow, as heiress, of a portion of the estate of her deceased husband without proof either of legal necessity or of reasonable enquiry and honest belief as to its existence, but with the consent of the next reversioner for the time being, will be valid and binding on the actual reversioner, if the presumption of legal necessity or of reasonable enquiry and honest belief raised by such consent is not rebutted by more cogent proof *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy, I. L. R 10 Calc 1102*, considered. *Bajrangi Singh* v. *Manokarnika Bakhsh Singh, I. L. R 30 All. 1* ; *L. R. 35 I. A. I.* referred to. DEBI PROSAD CHOWDHURY *v.* GOLAP BHAGAT (1913) . . . . **I. L. R. 40 Calc. 721**

**3.** ——— *Alienation by father in favour of adopted son in family whose adoption alleged to be illegal—Form of suit —Suit for partition in case of stranger in Hindu family—Inaction and acquiescence of father of joint family, how far binding on sons—Limitation—Minority—Form of decree.* In a suit instituted in 1907 by members of a Hindu joint family governed by the Mitakshara law to set aside their father's alienation of ancestral property, against the assignee, the first respondent, the father being made a *pro formâ* defendant, the appellants alleged that their father improperly made in 1898 a disposition of a specific portion of the property to the respondent who had been adopted by the widow of one or two brothers (with the consent of the other) from whom their father (the adopted son of the other brother) inherited the family property and they contended that the adoption of the first respondent was invalid for various reasons, and that they were entitled to recover the property alienated. The defence so far as material, was that the appellants were bound by the acquiescence of their father in admitting the first respondent to the family, and that the suit was barred by limitation. The respondents also objected to the form of the suit which they contended should have been for partition. At the settlement of issues, the appellants' pleader admitted "that their father had actually given possession in 1898 of the property in suit to the first respondent to enjoy it exclusively previously, since 1887, he was living as a joint member of the family, and jointly enjoying the profits by reason of the inaction and acquiescence of the appellants' father in that mode of enjoyment". The suit was decided without evidence on that admission, and on the allegations in the plaint and written statements, and was dismissed, and that decree was affirmed on appeal. *Held*, as to the form of suit, that to deny any relief except in a suit for partition would be to deny the right to relief altogether, since the basis of the claim was that the appellants were entitled to the estate as a joint and undivided estate, and desired to enjoy it as such. Also it might be that the first respondent was entitled to stand in the shoes of the appellants' father as to the share which would come to the latter on a partition ; and if he established such a position, the Court would at the instance of the respondent decree a partition between the appellants and their father. Without therefore expressing any opinion as to its validity in law or fact, their Lordships thought that, on the pleadings, it was open to the first respondent to set up such a case. *Held*, also, that though a partition made by a Hindu father may under some circumstances bind his minor sons [as in *Balkishen Das* v. *Ram Narain Sahu, I. L. R. 30 Calc. 738 ; L. R. 30 I. A. 139*, yet if on the partition a share is given to an absolute stranger (as the first respondent would be if his adoption were invalid) the partition may be impeached as a disposition of property made without consideration unless it can be supported as a *bonâ fide* compromise of a disputed claim. If, therefore, the adoption of the first respondent were wholly invalid, the appellants were entitled to succeed in the absence of any other defence. The Appellate Court as to limitation had decided that the suit was not barred as against the first appellant, but only as against the rest of the appellants who were minors, and had not been born at the time (1887) when it was alleged the adverse possession began to run. *Held*, that if the first appellant was entitled to relief the other appellants would also be so entitled. Under the circumstances, their Lordships, in allowing the appeal, were of opinion that they could not, on the materials before them, finally determine the rights of the parties, and remanded the case for trial with a declaration that it was competent to the Court, in the event of the first respondent failing in his other defences to make the whole or any part of the relief granted to the appellants conditional on their assenting to a partition so far as regarded the father's interest in the estate, so as to give effect to any right to which the first respondent might be entitled claiming through his assignor. RAMKISHORE KEDARNATH *v.* JAINARAYAN RAMRACHHPAL (1913)

**I. L. R. 40 Calc. 966**

**HINDU LAW—ALIENATION**—*concld.*

**HINDU LAW—DAUGHTER'S ESTATE.**

——— *Decree for possession of father's estate obtained by daughter—Right of daughter's sons to execute such decree.* The daughter of a separated Hindu obtained a decree for possession of her father's estate against certain trespassers. Before, however, she could obtain possession, she died and her sons applied for execution. *Held*, that the daughter represented her father's

**HINDU LAW—DAUGHTER'S ESTATE—** *concld.*

estate when she brought her suit for possession and that the persons who succeeded to the estate were entitled to execute the decree which she had obtained. MAHADEO SINGH *v.* SHEO KARAN SINGH (1913) . . . **I L. R. 35 All 481**

**HINDU LAW—ENDOWMENT.**

1. ——————— *Endowment—Right of succession to sebaitship of temple belonging to Ballavacharya Gossains—Evidence of dedication—Claim of persons incompetent to be sebaits (as being Bhats) of Ballav temple disallowed as defeating the purpose for which the founder established the worship—Title—Proof of independent title to succession as sebait* In a suit for possession and the right of sebaitship of a temple belonging to the Ballavacharya Gossains founded by one Muttuji, the maternal grandfather of the plaintiffs (appellants), the defendant (respondent) contended that the ordinary Hindu law was not applicable as alleged by the plaintiffs, and that daughters' sons were excluded by custom from succession. *Held*, that, apart from positive testimony on the point, the performance of the worship of the idol in accordance with the rites of the sect for whose benefit it was held, might be treated as good evidence of dedication, and the ordinary rule of Hindu law relating to the descent of private property was not applicable. *Held*, also, that the rule that the heirs of the founder succeed to the sebaitship laid down in *Gossamee Sree Greedhareejee v. Romanlalljee Gossamee, I. L. R 17 Calc. 3, L. R. 16 I. A. 137*, was, as there implied, subject to the condition that the devolution in the ordinary line of descent is not inconsistent with or opposed to the purpose the founder had in view in establishing the worship. In the present case the appellants being Bhats, and not belonging to the Gossain *kul*, were not competent to be sebaits of a Ballav temple where the rites were performed according to the Ballav ritual, which, it was clearly established, they could not perform. To allow their claim would defeat the purpose for which the worship was established. *Held*, further, that the respondent had established an independent title of his own to the temple as being the nearest male relative of Muttuji, both being descendants of two full brothers. The idol in the temple was brought from his temple at Nathdwara, and the worship founded by Muttuji was an off-shoot of the worship at Nathdwara. The temple was also built on land belonging to the Tekait respondent with the permission of his ancestor, who held the office of Tekait at the time He had therefore a clear title according to the customs and usages of the Ballav *kul* to the sebaitship of the temple. MOHAN LALJI *v.* GORDHAN LALJI MAHARAJ (1913) **I. L. R 35 All. 283**

2. ——————— *Debutter—Idol, destruction or mutilation of, if terminates endowment—Consecration of new idol, effect of—Land given for worship of idol—Grantee if bound to apply proceeds for service of new idol—Statement partly against one's interest and partly self-regarding—Admissibility.* When an image is mutilated or destroyed the religious purpose does not come to an end, and a new image may be established and consecrated in order that it may be worshipped as intended by the original founder. Where the site where an image which was established by an ancestor of the plaintiff was forty years before the suit washed away and the image itself was broken to pieces, but continued to be worshipped in that condition out of the profits of some land made over by the ancestor of the plaintiff to an ancestor of the defendant for that purpose, and the plaintiff having now established and consecrated a new image under the same name in a new temple in the same village, called upon the defendant to perform the worship of the image out of the profits of the land, and the defendant having refused, plaintiff brought this suit to compel the defendant to perform the worship and in the alternative for ejectment. *Held*, that upon these facts the plaintiff was entitled to a decree for ejectment. A statement by a predecessor of the defendant that the land had been given in order that the income might be applied for the worship of the grantee's family idols and also of the image established by the plaintiff's ancestor, was admissible against the defendant to prove that the land was given for the purpose of the image, but not in his favour to prove that it was given for the worship of the defendant's family idols. BIJOY CHAND MAHATAP *v.* KALI PADA CHATTERJEE (1913) **17 C. W. N. 1013**

**HINDU LAW—ILLEGITIMACY.**

——————— *Illegitimate son Mitakshara, Chap. I, s. 12—Dasi-putra, meaning of—Illegitimate son of a Sudra, share taken by him in father's property.* The word *dasi-putra as used* in Mitakshara, Chap. I, s. 12, which provides for the illegitimate son of a *Sudra* getting half of the share of a legitimate son in the father's property, has a much wider meaning than a son begotten on a female slave, and if a *Sudra* governed by the Mitakshara law has a permanent, continuous and exclusive concubine who lives as a member of his family, she is a *dasi* and his illegitimate son by her who is himself brought up as a member of the family is a *dasi-putra* within the meaning of the rule laid down in the Mitakshara. *Jogendra Bhupati v. Nityananda Man Singh, L. R. 17 I. A. 128 : I. L. R. 18 Calc 151, Rahi v. Govinda, I. L. R. 1 Bom. 97, Sadu v. Baiza, I. L. R. 4 Bom. 37, Krishnayyan v. Muttuswami, I. L. R. 7 Mad. 407, Har Govinda v. Dharam, I. L. R. 6 All. 329, Karuppannan v. Bulokan, I. L. R. 23 Mad. 16, Seshgiri v. Girewa, I. L R. 14 Bom. 282, Ramkali v. Jamba, I. L. R. 30 All 508, Sarasuti v. Mannu, I. L. R. 2 All. 134, Inderan v. Ramswami, 3 B. L R. P. C. 1; 13 Moo I A. 141, Meenakshi v. Appakutti, I. L. R 33 Mad. 226, Annaayyan v. Chinnan, I. L R. 33 Mad 366*, referred to *Ram Saran v. Tek Chand, I. L. R 28 Calc. 194*, distinguished. CHATTURBHUJ PATNAIK *v.* KRISHNA CHANDRA PATNAIK (1912) **17 C W. N. 442**

## HINDU LAW—INHERITANCE.

1. ——————— *Ascetics—Sudras —Rules relating to ascetic persons of the Sudra caste.* A *Sudra* cannot enter the order of *yati* or *sannyasi*, and therefore a *Sudra* who becomes an ascetic is not excluded from inheritance to his family estate unless some usage is proved to the contrary : *Dharampuram* v. *Virapandiyam, I. L. R. 22 Mad. 302*, followed. HARISH CHANDRA ROY *v.* ATIR MAHMUD (1913)
**I. L. R. 40 Calc. 545**

2. ——————— *Succession to stridhanam—preference of co-wife's daughter to sapindas of husband.* Under the Mitakshara law of inheritance, the daughter of a co-wife of a deceased woman, married in one of the approved forms, is entitled to succeed to her stridhanam property in preference to the sapindas of her husband, such as his father's brother's son. *Placitum* 11 of section XI of Chapter II, Mitakshara, applied. Colebrooke's translation of 'sapinda' in that *placitum* as 'kinsmen allied by funeral oblations' is incorrect; the correct meaning being 'kinsmen allied by affinity' or 'persons allied to each other by possession of particles of the same body.' According to the above text the stridhanam property of a woman married according to an orthodox form, who has left no issue, will devolve on her husband, and on failure of the husband the property will go to his sapindas in the order laid down in the Mitakshara with reference the succession to the property of a male. *Venkatasubramaniam Chetti v. Thayaramma, I.L.R. 21 Mad. 263, Gojabai* v. *Shrimant Shahajirao Moloji Raje Bhosle, I L.R 17 Bom. 114, 117, Jagannath Prasad Gupta* v. *Runjit Singh, I.L.R. 25 Calc 354, 367, Krishnai* v. *Sripati, I.L R. 30 Bom. 333, Bai Kesserbai* v. *Hunsraj Moraji, I L. R. 30 Bom. 431 Mussumat Thakoor Deyhee* v. *Rai Bauk Ram, 11 Moo. I.A. 139, 175*, and *Champat* v. *Shiba, I.L R. 8 All. 393*, applied. West and Buhler, p. 518, T. Krishnasami Aiyar's Translation of Smriti Chandrika, Chapter IX, section III, verse 83, Golab Chandra Sircar Sastri's Hindu Law, 4th edition p. 461, and Bhattacharya's Hindu Law, p. 580, referred to. NANJA PILLAI *v.* SIVABAGYATHACHI (1913) . **I. L. R. 36 Mad. 116**

3. ——————— *exclusion from —inheritance—Dayabhaga—Murder of father—Transportation—Partition suit by heir of excluded coparcener—Claim for maintenance not put forward —Claim for maintenance after sentence served out—Claim by his wife and after-born son—Res judicata—Separate causes of action —Multifariousness—Civil procedure Code (Act V of 1908), O. I, r. 1.* Where a son who was excluded from inheritance by reason of his murdering his father has served out the punishment inflicted upon him and claims maintenance from his son the person who has excluded him from inheritance: *Held*, that under the Hindu Law he is entitled to maintenance on the principle that property in the hands of the coparcener who has excluded another from inheritance, is liable to a claim or charge for the maintenance of the disqualified coparcener. His wife also, if chaste, is similarly entitled to maintenance

## HINDU LAW—INHERITANCE—*concld.*

out of the property. An after-born son of the disqualified co-parcener is also entitled to maintenance as a dependent member of the family. A single suit by all three is maintainable under O. 1, r. 1, Civil Procedure Code NILMADHAB MITTER *v.* JOTINDRA NATH MITTER (1913)
**17 C W. N. 341**

4. ——————— *Dayabhaga—Great-grandfather's great-grandson and father's brother's daughter's son, preferential heir who is—Stare decisis, doctrine of.* As between the great-grandson of the great-grandfather of a deceased owner and the latter's father's brother's daughter's son, the latter is, upon the authority of the Full Bench decisions in *Gooroo Gobind* v. *Anund Lal, 5 B. L R. 15 , 13 W. R. (F. B.) 49, Digumbar Ray* v. *Moti Lal, I. L. R. 9 Calc. 563*, the preferential heir. To re-open the question of succession settled by these decisions would not be proper. *Young v. Roberston, 4 Macqueen H L. 314, 345*, and *Sri Raja Rao Venkata* v. *Court of Wards, L. R. 26 I. A. 83 ; 3 C. W. N. 715*, referred to KEDAR NATH RAY *v.* AMRITA LAL MUKERJEE (1911)
**17 C. W N. 492**

## HINDU LAW—JOINT FAMILY.

1. ——————— *Joint family—Mitakshara—Copartnership—Presumption as to law governing family settling in province other than that of its origin—Transfer of the ancestral property—Liability of sons to pay the debts of their father—Conversion of some of the sons to Christianity, effect of—Status—Limitation—Removal of Caste Disabilities Act (XXI of 1850).* The plaintiffs and the defendants Nos. 5 to 7 and the husbands of the defendants Nos. 8 and 9 were the sons of one Amirta Lal Pandey, whose father, a Hindu governed by the Mitakshara law, was originally a resident of Oudh, but subsequently migrated to and settled in the district of Bankura where he acquired properties and continued to live jointly with his family. The defendants Nos. 1 to 4 were the transferees of the ancestral property which formed the subject-matter of this suit. On the 19th March 1900, Amirta Lal Pandey executed a deed of conveyance, whereby he transferred his ancestral property to the defendants Nos. 1 to 4, in satisfaction of certain debts incurred by him in 1892 and 1895. He was joined in this conveyance by the defendants Nos. 5 to 7. On the 26th December 1900, Amirta Lal Pandey died, leaving him surviving six sons, *viz.*, the plaintiffs and the defendants Nos. 5 to 7, as also the widows of his two sons who had predeceased him in 1880 and 1883, respectively. Of the six sons, the plaintiffs Nos. 1 and 2 had been converted to Christianity in 1890 and 1896 respectively, the defendant No. 5 became a convert to the same faith in 1904, and the plaintiff No. 3 attained his majority in 1902 On the 19th March 1907, the plaintiffs filed their suit against the defendants Nos. 1 to 4 for a declaration of the plaintiffs' title to a three-seventh share of the ancestral property and for recovery of *khas* possession and mesne profits, and made

the defendants Nos. 5 to 9 *pro formâ* defendants: *Held*, that when the grandfather of the plaintiffs migrated from Oudh to Bengal, the presumption was that he carried with him the laws and customs as to succession and family relations prevailing in the province from which he came Such a presumption might, however, have been rebutted by proof that the family had adopted the law and usages of the place to which he had migrated. *Held*, also, that in 1890, by reason of his conversion to Christianity, the first plaintiff ceased to be a member of the joint Hindu family, but that thenceforward he continued to hold the ancestral property as joint owner, and was entitled to recover possession of one-seventh share of the property on the basis that in 1890, upon the dissolution of the family, he became entitled to such share· *Jalbhai Ardeshir Shet v. Louis Manöel, I. L. R. 19 Bom. 680*, and *Lastings v. Gonsalves, I. L. R. 23 Bom. 539*, distinguished. *Held*, further, that the second plaintiff, upon his conversion to Christianity in 1896, ceased to be a member of the joint family, and was not bound by the conveyance of the 19th March 1900, but that he was liable to satisfy the debts of his father incurred and charged upon the ancestral property prior to the date of his conversion. *Ram Prasad Singh* v. *Lakhpati Koer, I. L. R. 30 Calc. 231*, *Balabux* v *Rukhmabai, I. L. R. 30 Calc. 725*, and *Balkishen Das* v. *Ram Narain Sahu, I. L R. 30 Calc. 738*, distinguished. *Held*, further, that Amrita Lal Pandey was competent in 1900 to alienate the ancestral property in his hands, not merely in respect of his own interest, but also that of the third plaintiff. KULADA PRASAD PANDEY *v.* HARIPADA CHATTERJEE (1912) . . . . **I. L. R. 40 Calc. 407**

**2.** ——— *Joint family —Allegation of separation in suit by some members for separate share—Expression of intention to hold share separately not proved—Right to mesne profits on separation—Exclusion from joint family, allegation of—Non-receipt of share of profits of joint property—Voluntary residence not with joint family—Refusal of allowance as being inadequate.* The appellant, a member of a joint undivided Hindu family brought a suit in 1905 against the respondents, the other members of the family, alleging a separation by him in 1901, when he had expressed his intention to hold his share separately, and claiming possession of his share, with mesne profits. *Held*, that what may amount to a separation, or what conduct on the part of some of the members may lead to separation of a joint undivided Hindu family, and convert a joint tenancy into a tenancy-in-common, must depend on the facts of each case. A definite and unambiguous indication by one member of intention to separate himself and to enjoy his share in severalty may amount to separation; but to have effect the intention must be unequivocal and clearly expressed. Separation from commensality does not as a necessary consequence effect a division [*Rewun Persad* v *Radha Beeby, 4 Moo I. A. 137*]. A separation in mess and worship may be due to various causes, and yet the family may continue joint in estate. In this appeal it was *held* (affirming the decision of the Court of the Judicial Commissioner), that on the evidence in, and under the circumstances of, the case and the conduct of the party alleging division of the family there had been no separation in 1901, and the appellant was consequently not entitled to mesne profits on that ground He also claimed mesne profits on the ground of exclusion from the joint family, as he had not since 1901 received any share of the profits of the joint property. *Held*, that, although he had not received any of the profits of the joint estate, the evidence was clear that the appellant was offered an allowance from the profits of the joint property which he refused to accept as being inadequate, and that would not amount to exclusion SURAJ NARAIN *v.* IQBAL NARAIN (1912) . . . **I. L. R. 35 All. 80**



**3.** ——— *Joint Hindu family—power of father to bind the family property—Further no power to revive time-barred debt. Held*, that the father and manager of a joint Hindu family cannot legally revive a time-barred debt and bind the family property to secure its payment. *Chandra Deo* v. *Mata Prasad, I. L. R. 31 All. 176*, and *Indar Singh* v. *Surja Singh 8 All. L. J. 1009*, followed. DALIP SINGH *v.* KUNDAN LAL (1913) **I. L. R. 35 All. 207**

**4.** ——— *Mitakshara—Joint Hindu family—Liability of sons in respect of a mortgage executed by father—Exemption of son's interests —Subsequent suit against the sons—What plaintiff's are entitled to recover.* In 1892, a decree was passed on appeal for sale on a mortgage of joint family property against the father of the family. In 1896, the sons, who were not made parties to the original suit, obtained a decree exempting their shares in the family property. In 1897, the share of the father was sold and realized less than half the amount of the decree. In 1910, the mortgagees brought a suit against the sons to recover the balance of the mortgage debt after giving credit for the amount realized by sale in execution of the decree of 1892. *Held*, that the suit was not barred, but that the plaintiffs could only recover the unsatisfied portion of the decree of 1892 together with future interest as allowed by that decree. They could not treat the suit as an ordinary mortgage suit, merely giving credit for the amount realized under the decree of 1892, nor could they claim interest at the contractual rate on the unpaid amount of the decree. *Lachman Das* v. *Dalu, All. Weekly Notes (1900), 125*, followed. *Dhaiam Singh* v. *Angan Lal, I L. R 21 All. 301*, and *Ran Singh* v. *Sobha Ram, I. L. R. 29 All. 544*, referred to. JALESHAR RAI *v.* ANRUT RAI (1913) **I. L. R. 35 All. 302**

**5.** ——— *Joint Hindu family—Execution of decree —Power of managing member to enter up satisfaction of decree on behalf of the family. Held*, that the managing member of a joint Hindu family can execute decrees on behalf of the family, and can receive payment and

**HINDU LAW—JOINT FAMILY—*contd.***

give good receipts on behalf of the family, which will be binding on the family. *Hori Lal* v. *Munman Kunwar, I. L. R. 34 All. 549,* followed. *Ganga Dayal* v. *Mani Ram, I. L. R 31 All. 156,* distinguished ACHHAIBAR SINGH *v* RAM SARUP SAHU (1913) . . . . **I. L. R. 35 All. 380**

**6.** ——— *Joint Hindu family—Mortgage—Suit for cancellation of mortgage executed by managing member—Compromise—Liability of sons.* One *K*, as head of a joint Hindu family, executed in 1905 a usufructuary mortgage of the family property, in which the widow of his deceased brother joined as a co-mortgagor In 1907 the mortgagors sued for concellation of this deed, but entered into a compromise with the mortgagee, upon which a decree was passed maintaining the mortgage, but in a modified form. The mortgagee thereafter instituted a suit for enforcement of the mortgage as settled by the compromise decree *Held,* that, in view of the fact that the courts below found that the compromise was genuine and for the benefit of the family, it was not open to the defendants to raise the question of the genuineness of the original mortgage, and that, whether or not the original mortgage was a genuine transaction, the compromise decree gave rise to a debt which was binding on the descendants of the original mortgagor *K. Madan Lal* v. *Kishan Singh, I. L. R. 34 All. 572,* referred to. RAM KUBER PANDE *v.* RAM DASI (1913) **I. L. R. 35 All. 428**

**7.** ——— *Joint Hindu family—Mortgage—Mortgage by two brothers of undivided shares, each assenting to the other's mortgage—Partition—Entire mortgaged property falling to the share of one brother—Effect of partition on rights of mortgagee.* Two brothers constituting a joint Hindu family jointly mortgaged in *1819* a ten biswa share in village Chauwar. In 1881, in substitution for this mortgage, each brother mortgaged to the same mortgagee a five biswa undivided share in Chauwar, and each brother also signed the mortgage executed by the other. In 1888, the family property was partitioned and the whole ten biswa of Chauwar fell to the share of one brother. *Held,* on suit by the son of the mortgagee for sale, that the plaintiff was entitled to bring to sale a five biswa share in Chauwar under the mortgage executed by the brother who had lost possession of the village, and not merely to have recourse against such portion of the family property as he had taken in exchange therefor *Bynath Lall* v. *Ramoodeen Chowdry, L. R. 1 I. A. 106,* distinguished SUNDAR LAL *v.* BRIJ LALL (1913) **I. L. R. 35 All. 543**

**8.** ——— *Joint Hindu family—Presumptions as to property in the possession of members of a joint family* Property in the possession of a joint Hindu family should be presumed to be joint family property until the contrary is shown. even though it may have been acquired in the name of a particular member of the family. The fact that property stands in the individual name of one or other member of a joint

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Hindu family does not of itself give rise to the presumption that it is the separate property of that member *Gurumurthi Reddi* v. *Gurummal, I. L. R. 32 Mad. 88, Shiv Gulam Singh v. Baran Singh, 1 B. L. R 164,* and *Taruck Chandra Totadar v. Joodheshteer Chunder Koondoo 19 W. R. 178* referred to. *Ram Kishen Das* v *Tunda Mal, I. L. R. 33 All. 677,* discussed. KUNDAN LAL *v.*, SHANKAR LAL (1913) . **I. L. R. 35 All. 564**

**9.** ——— *Joint Hindu family —Mortgage —Guardian ad litem—Suit on mortgage executed by father prior to birth of son—Father appointed son's guardian ad litem. Held,* that, inasmuch as an after-born son cannot in a suit on a mortgage made by his father set up the defence of the immoral nature of the debt on account of which mortgage was executed, it cannot be said that the appointment of the father as guardian *ad litem* in such suit would be necessarily prejudicial to the interests of the son NARAIN DAS v. HAR DAYAL (1913) **I. L. R. 35 All. 571**

**10.** ——— *Joint Hindu family—Trading business belonging to joint Hindu family—Position of an infant member of a joint Hindu family with regard to business contracts—Joinder of parties—Necessary parties to a suit on a business contract entered into by certain members of a joint Hindu family carrying on an ancestral business on behalf of all the members of the family.* A trade, like other personal property, is descendible amongst Hindus, but it does not follow that a Hindu infant, who by birth or inheritance, becomes entitled to an interest in a joint family business, becomes at the same time a member of the trading corporation which carries on the business. Accordingly, it is not necessary in the case of a Hindu family to join in a suit upon a business contract minor members of the family who in fact take no share in the business which is carried on on behalf of the family. Those who actually were the contracting parties with the defendant must in the case of a suit by members of a Hindu family all be joined, but minor members of the family who take no part in the family business should not be joined in suing for business debts. LALJI NENSEY *v.* KESHOWJI PUNJA (1912) . . . . **I. L. R. 37 Bom. 340**

**11.** ——— *Co-owners treating near relations as joint owners of property—Title if passes without registered document.* Transfer by way of gift is not, under Hindu Law, the only means of creating title apart from inheritance and succession. If the persons actually entitled to a property agree to treat a near relation as a co-sharer out of affection and abandon their claim to an exclusive right they may do so without a registered deed Where, therefore, upon the death of a Hindu widow, the actual reversionary heirs of her husband treated two other relations, one degree lower in descent, as co-sharers for a shorter period than that which would give them title by adverse possession · *Held,* that the purchasers in execution of the interest of one of these persons became entitled by their purchase to the share which he had been enjoying jointly

## HINDU LAW—JOINT FAMILY—*contd.*

with the actual reversioners. GIRHI RANI MISRANI *v* CHANDRA LAL KANTH (1912) **17 C. W. N. 62**

12. ——— *Father's debt, son's liability to pay, Mitakshara—Proof of immoral habits if enough.* A sale of joint family property for a father's debt cannot, under the Mitakshara school of Hindu Law, be avoided by the sons merely proving that the father was a man of immoral habits. They must prove that the particular debt was incurred for an immoral purpose. SRI NARAIN *v.* LALA RAGHUBANS RAI (1912) . . . . **17 C. W. N. 124**

13. ——— *Father, alienation by, if and when binds sons—Mitakshara—Afterborn son if precluded from questioning alienation—Mortgage if distinguishable from sale.* It is well-settled that where a Mitakshara father has made an alienation without necessity and without the consent of sons then living, it would not only be invalid against them but also against any son born before they had ratified the transaction, and no consent given by them after his birth would render it binding upon him. *Hurodoot* v. *Beer Narayan, 11 W. R. 48, Bunwari Lal* v. *Daya Sunkar 13 C. W. N. 815,* relied on. The rule applies with greater force in the case of a mortgage than in the case of an absolute alienation. *Kissen Prasad v. Tippan Prasad, I. L. R. 34 Calc. 735,* referred to. HAZARI MALL BABU *v.* ABANINATH ADHURJYA (1912) . . . . **17 C. W. N. 280**

14. ——— *Father's debt—Mortgage by father alleged by sons to be for improper purposes—Onus—Issue—Pleadings.* It is well-settled that where a particular debt contracted by a Mitakshara father is alleged by the sons to have been contracted for an illegal or immoral purpose, the burden is on the sons to prove that it was so contracted and such burden is not discharged by proof that the father lived an extravagant or immoral life. There must be direct connection established between the particular debt and immorality. Where the parties without objection went into evidence on the question of the immoral character of the debt upon an issue framed as follows: "Were the mortgage bonds *bonâ fide* transactions and executed for legal necessity," and there was no suggestion that either party was misled by the terms of the issue : *Held,* that the Court would not under such circumstances remand the case for trial upon an issue more precisely framed. *Vishnu* v. *Ganesh, I. L. R. 21 Bom 325, Saheb Prahlad Singh* v. *Broughton, 24 W. R. 275,* referred to. HAZARI MALL BABU *v.* ABANINATH ADHURJYA (1912) . **17 C. W. N. 280**

15. ——— *Joint or self acquired property—Self acquisition of coparcener thrown into common stock, if may be disposed of by will—Consent of other coparceners, if necessary.* Where the head of a joint Mitakshara Hindu family kept one account of the income of his ancestral and self-acquired property and used to treat the income of both kinds of property as one amalgamated fund : *Held,* that the property which had been acquired by him as his self-acquired property became the property of the joint family, which he was not competent to dispose of by will without the consent of his co-parceners. INDAR SAHAI *v.* SHIAM BAHADUR (1912) **17 C. W. N 509**

16. ——— *Father, mortgage of immoveable property by—Mitakshara—Suit against sons—Limitation—Limitation Act (XV of 1877), Sch. I, Art. 132.* A suit to enforce a mortgage of ancestral property executed by a Mitakshara father against his sons, is a suit to enforce payment of money charged upon immoveable property and is governed by Art. 132 of Sch. II of the Limitation Act of 1877. *Maheshur Dutt* v. *Kishen Singh I. L. R. 34 Calc. 184; 11 C. W. N. 294,* followed. *Lachmun* v. *Giridhar, I. L. R. 5 Calc 855,* and *Surja prasad* v. *Golab Chand, I. L. R. 27 Calc. 762,* not followed. *Bhagabat Prosad* v. *Suba Lal. 7 C. L. J. 195,* referred to. SHEO NARAIN RAY *v.* MOKSHODA DAS MITTRA (1913) . . . . **17 C. W. N. 1022**

*See* ALSO BISSONATH PROSAD MAHTA *v.* BRINDESRI PROSAD SINGH (1912) **17 C. W. N. 1025n**

17. ——— **Separation**—*Separate entries in revenue record in the name of brothers and brother's widow—Separate mortgages by some brothers of respective shares—Presumption as to separation or joint possession —Plaintiffs not giving evidence, effect of—Onus and rebutting of inference from documentary evidence.* Separate entries in the revenue records of names of members of a Mitakshara Hindu family in regard to specified areas, standing by themselves, may be inconclusive to rebut the presumption of Hindu law relating to jointness or to prove separate possession when in its inception the family was admittedly joint, but where half-brothers claimed a deceased brother's share in certain villages and lands against his widow whose name as also those of the half, brothers had been separately recorded in the revenue records and it was in evidence that the half-brothers had executed separate mortgages in respect of their respective shares, and they did not come into the witness box to show that these transactions, although separate, were consistent with jointness : *Held,* that the acts of the brothers were only consistent with the hypothesis of separation. RAM SINGH *v.* TURSA KUNWAR (1913) **17 C. W. N. 1085**

## HINDU LAW—MARRIAGE.

1. ——— *Marriage of a Hindu girl without force or fraud but without consent of legal guardians—Maxim "factum valet."* The marriage of a Hindu girl of some 16 years of age was effected by the maternal uncle of the girl. There was no evidence of force or fraud ; but the marriage was against the wishes of the paternal relatives of the girl, who desired to make a profit

## HINDU LAW—MARRIAGE—*concld.*

by marrying her to a rich but one-eyed man called Tulshi *Held*, that the case was one to which the doctrine of *factum valet* should be applied, and the marriage was declared to be valid *Ghazi* v *Sukru, I L. R 19 All. 515, Venkatacharyulu* v *Rangacharyulu, I L. R 14 Mad 316, Surjyamoni Dasi* v *Kali Kanta Das, I. L R. 28 Calc 37, Mulchand* v. *Budhia, I L. R 22 Bom 812*, and *Khushalchand Lalchand* v *Bai Mani, I. L. R 11 Bom 247*, referred to. KASTURI *v* CHIRANJI LAL, (1913) **I L. R. 35 All. 265**

2. ——— *Koli caste—Marriage between a divorced woman and a man—Approved form of marriage—Asura form of marriage —Test of asura form.* A marriage between a man and a divorced woman belonging to the Koli caste is not to be regarded as being an unapproved form of marriage under Hindu Law. The essence of the *asura* form of marriage is that a bride-price should be paid to the father or other relative who gives away the bride in consideration of the marriage HIRA *v.* HANSJI PEMA (1912) **I. L. R. 37 Bom. 295**

## HINDU LAW—PARTITION.

1. ——— *Requisites for Partition—Agreement to hold property in certain specific and defined shares, effect of—Re-union, failure to prove as alleged.* The members of a joint Hindu family came to the following agreement:—'Now we have already come to terms, and according to the shares given below we have been in possession and enjoyment of our respective shares. As regards it we have with our mutual consent entered into an agreement according to the terms given below. The same share in the property which is in the possession of a particular person as given below shall be considered to be the property of that very person who is in possession thereof. If any of us brings any suit in the Civil or Revenue Court to the effect that his share is less or he is a loser, it shall be considered to be false in every Court. By virtue of this agreement no person shall be competent to bring any claim in any Court in respect of any portion of the property other than the property detailed below." Then followed a specification of the villages belonging to the family, and the shares in which those villages were thereafter to be held From that time the property had been entered in the register in accordance with the arrangement contained in the agreement, and the agreement had been acted upon up to the time of suit. *Held* by the Judicial Committee (affirming the decision of the High Court), that on the evidence and circumstances of the case, the agreement was one which operated as a partition of shares, and the family thenceforth ceased to be joint in accordance with the principle laid down in *Appovier* v *Rama Subba Aiyan, 11 Moo I A 75, Balkrishen Das* v. *Ram Narain Sahu, I. L R. 30 Calc. 738, L. R. 30 I. A. 139*, and *Parbati* v. *Naunihal Singh, I. L. R 31 All 412, L. R. 36 I. A 71.* There was no re-union. That was a question of fact, and there was no evidence to show

## HINDU LAW—PARTITION—*contd.*

that any of the members of the family re-united, or even contemplated re-union. RAGHUBIR SINGH *v.* MOTI KUNWAR (1912) . **I. L. R. 35 All. 41**

2. ——— *Requisites for partition—Partition created by so-called will in life-time of father dividing family property among his sons and taking no share himself—Double share to eldest son—Unequal partition under alleged custom—Provision for forfeiture on mismanagement or bad behaviour—Conduct of parties after execution of document of partition* By a document called a "Will" dated the 26th of November, 1895, the father and head of a Hindu joint family governed by the Mitakshara law recorded a division of the ancestral family property amongst his three sons (giving himself no share but allotting a double share to his eldest son). The document recited that, "my three sons are at present fully qualified to conduct the business. Therefore in order to avoid a dispute after my death I have at present, while in a sound state of body and mind and of my own free will and accord, divided the property among my sons, heirs, as follows" Then followed the details of the division. There was provision that, "If I at any time come back from pilgrimage and find mismanagement or character of any one bad, then I shall have power to cancel this will which shall be enforced from the date of its execution" and the document concluded as follows —'All the three sons were put in separate possession of the estate in the beginning of the year 1303 Fash" (September 1885) "I have no other heir having a right besides those mentioned in this will I have therefore executed this will in order that it may serve as evidence." Mutations of the various shares were subsequently made into the names of those to whom they were separately allotted, and the evidence showed that the division had been assented to, acquiesced in, and acted upon by the sons up to 1905 In a suit brought in September 1905, four years after the father's death, by the two younger sons for partition of the property which they alleged to be joint and undivided, and of which they claimed to be entitled to two one-third shares. *Held* (reversing the decision of the High Court), that the document of the 26th of November, 1895, was not a will but was intended to operate from its date and was in fact a family arrangement contemporaneously made and acted upon by all parties, the effect of which was, under the circumstances of the case, to create a partition of the joint ancestral property There was nothing in the fact that the document was called a will doubtedly made in fact, and which was acted upon for ten years without any dispute or misunderstanding as to the respective rights of the parties under it. *Held*, also, that the provision in the will giving the father power to cancel it in certain events, evidenced a contractual condition which the sons accepted in order to obtain the partition, which gave them immediate possession of the property, and viewed thus, the contructual acceptance of a power of forfeiture in case of bad behaviour would not be sufficient to prevent

HINDU LAW—PARTITION—*concld.*

the p .rtition operating *in praesenti* BRIJRAJ SINGH *v* SHEODAN SINGH (1913) **I. L. R. 35 All. 337**

HINDU LAW—PROSTITUTE'S PROPERTY.

——————— *Stridhan—Prostitute's property, succession to* The mere fact that a Hindu woman has adopted the life of a prostitute does not sever the tie which connects her to her kindred by blood, and, consequently, her *stridhan* property passes upon her death, in the absence of nearer heirs, to her brother's son as an heir under the Bengal school of Hindu law *Tara Munnee Dossea* v *Motee Buneanee, 7 Mac Sel Rep 325, 8 I. D (O. S.) 247, Ramnath Tolapattro* v. *Durga Sundri Debi, I L. R 4 Calc 550, In the goods of Kamineymoney Bewah, I L. R 21 Calc. 697, Ramananda* v *Rai-kishori Barmani, I. L. R 22 Calc 347, Sarna Moyee Bewa* v. *Secretary of State for India, I. L R 25 Calc. 254,* and *Sundari Letani v Pitambari Letani, I. L R 32 Calc. 871,* overruled so far as they hold that tie of blood is destroyed by unchastity or, in the case of a Hindu woman, by her adopting the life of a prostitute. *Bisheshur* v. *Mata Gholam, 2 All. H. C. 300, Musammat Ganga Jati* v. *Ghasita, I. L. R 1 All. 46, Advyapa v. Rudrava, I. L R. 4 Bom. 104, Koiyadu* v *Lakhshmi, I. L R 5 Mad. 149, Subbaraya Pillai* v *Ramasami Pillai, I L. R. 23 Mad. 171, Bhutnath Mondol* v *Secretary of State for India, 10 C W. N. 1085, Sundari Dosee* v *Nemye Charan Daw, 6 C L J 372,* and *Tripura Charan Bannerjee* v. *Harimati Dassi, I. L R 38 Calc. 493,* approved. *Sivasangu* v *Minal, I L R 12 Mad 277,* and *Narasanna* v. *Gangu, I L R 13 Mad. 133,* distinguished and dissented from HIRALAL SINGHA v TRIPURA CHARAN RAY (1913) **I. L. R. 40 Calc. 650**

HINDU LAW—SELF-ACQUIRED PROPERTY.

——————— *Ancestral or self-acquired property—Mitakshara School—Gift by owner of impartible estate of portion of property to younger son for maintenance of himself and his descendants —Property if ancestral or self-acquired in grantees hands* Where a Hindu instead of allowing his self-acquired or separate property to go by descent, makes a gift of it to his son or bequeaths it to him by will such property has been treated by the Calcutta High Court as ancestral property in the hands of the son as if he had inherited it from his father. *Muddun Gopal* v. *Ram Buksh 6 W. R 71,* followed Authorities reviewed and the views taken by the other High Courts discussed The decision of the Privy Council in *Sartaj Kuari* v *Deoraj Kuari, L R 15 I. A. 51, I L R 10 All 272,* and *Sri Raja Rao Venkata* v. *Court of Wards L. R. 26 I A. 83, I L R 22 Mad 383,* recognise that the holder of an impartible estate has the right to alienate the estate without the consent of the next taker, but they do not by necessary implication involve the conclusion that if the holder of the impartible estate by a testamentary disposition or otherwise carves out a portion thereof and grants it to his younger son for the maintenance

HINDU LAW—SELF-ACQUIRED PROPERTY—*concld.*

of the son and his descendants, such property becomes the self-acquired property of the grantee, liable to be capriciously alienated by him to the detriment of the grandsons of the grantor Such property has all the incidents of ancestral property in the grantees' hands *Durga Dutt* v *Rameshwar, I L R 36 Calc. 943, 13 C. W. N. 1013,* referred to. HAZARI MALL BABU *v.* ABANINATH ADHURJYA (1912) . . . . **17 C. W. N. 280**

HINDU LAW—STRIDHAN.

1. ——————— *Inheritance—Stridhan—Half-sister's son of Hindu widow—Probate, application for—Daughter's son of the great-grandson of the great-great-grandfather of the testatrix' husband whether preferential heir to half-sister's son.* Under the Dayabhaga School of Hindu law a half-sister's son of a widow is heir to her *stridhan* property, in preference to the daughter's son of the great-grandson of the great-great-grandfather of her husband, and that therefore the latter has no *locus standi* to oppose an application for probate by the former, of a will alleged to have been executed by the said widow in regard to such property. *Dasharahi Kundu* v. *Bipin Behary Kundu, I. L R 32 Calc 261,* and *Bholanath Roy* v. *Rakhal Dass Mukharji, I. L. R 11 Calc 69,* referred to *Chatoo Kurmi* v *Rajaram Tewari, 11 C L J. 124,* distinguished. SHASHI BHUSHAN LAHIRI *v.* RAJENDRA NATH JOARDAR (1912) . . . . **I. L. R. 40 Calc. 82**

2. ——————— *—Prostitute's property, succession to.* The mere fact that a Hindu woman has adopted the life of a prostitute does not sever the tie which connects her to her kindred by blood ; and, consequently, her *stridhan* property passes, upon her death, in the absence of nearer heirs, to her brother's son as an heir under the Bengal school of Hindu law. *Tara Munnee Dossea v. Motee Buneanee, 7 Mac Sel. Rep 325 ; 8 I. D. (O. S.) 247, Ramnath Talapattro* v *Durga Sundri Devi, I. L R. 4 Calc. 550, In the goods of Kamineymoney Bewah, I. L R 21 Calc 697, Ramananda* v. *Rai-kishori Barmani, I. L R. 22 Calc. 347, Sarna Moyee Bewa* v *Secretary of State for India, I L. R. 25 Calc. 254,* and *Sundari Letani v Pitambari Letani, I L. R 32 Calc 871,* overruled so far as they hold that tie of blood is destroyed by unchastity or in the case of a Hindu woman, by her adopting the life of a prostitute. *Bisheshur* v *Mata Gholam 2 All H. C 300, Musammat Ganga Jati v Ghasita, I. L. R 1 All. 46, Advyapa v. Rudrava, I. L. R. 4 Bom. 104, Koiyadu v Lakshmi, I. L. R. 5 Mad. 149, Subbaraya Pillai v Ramasami Pillai, I. L R. 23 Mad. 171, Bhutnath Mondol v Secretary of State for India, 10 C W. N. 1085, Sundari Dasse* v. *Nemye Charan Daw, 6 C. L J 372,* and *Tripura Charan Bannerjee v. Harimati Dassi, I. L. R. 38 Calc 493,* approved. *Sivasangu* v. *Minal, I L. R. 12 Mad. 277,* and *Narasanna* v. *Ganga, I. L. R. 13 Mad 133,* distinguished and dissented from. HIRALAL SINGHA *v.* TRIPURA CHARAN RAY (1913) **I. L. R. 40 Calc 650**

HINDU LAW—STRIDHAN—*concld*

3. ——————————— —*Succession—(Mitakshara),—Preference of co-wife's daughter to sapindas of husband* Under the Mitakshara law of inheritance, the daughter of a co-wife of a deceased woman married in one of the approved forms, is entitled to succeed to her stridhanam property in preference to the sapindas of her husband, such as his father's brother's son. *Placitum* 11 of section XI of Chapter II, Mitakshara, applied Colebrooke's translation of 'sapinda' in that *placitum* as 'kinsmen allied by funeral oblations' is incorrect ; the correct meaning being 'kinsmen allied by affinity' or 'persons allied to each other by possession of particles of the same body' According to the above text the stridhanam property of a woman married according to an orthodox form, who has left no issue, will devolve on her husband, and on failure of the husband the property will go to his sapindas in the order laid down in the Mitakshara with reference to the succession to the property of a male *Venkatasubramaniam Chetti* v. *Thayaramma I. L. R 21 Mad , 263, Gojabai* v. *Shrimant Shahājirāo Maloji Raje Bhosle, I.L R 17 Bom 114, 117, Jagannath Prosad Gupta* v *Runjit Singh, I L R 25 Calc 354, 367, Krishnai* v. *Sripati, I. L R 30 Bom 333, Bai Kesserbai* v. *Hunsraj Morarji, I L R 30 Bom 31, Thakoor Deyhee* v. *Rai Bauk Ram, 11 Moo. I.A. 139, 175,* and *Champat* v. *Shiba, I.L.R 8 All 393,* applied West and Buhler, p. 518, T. Krishnasami Aiyar's ranslation of Srimiti Chandrika, Chapter IX, section III, verse 83, Golab Chandra Sircar Sastri's Hindu Law, 4th edition, p. 461, and Bhattacharya's Hindu Law, p. 580, referred to. NANJA PILLAI *v* SIVABAGYATHACHI (1913) **I. L. R. 36 Mad. 116**

HINDU LAW—WIDOW.

*See* RES JUDICATA.
**I. L R. 37 Bom. 172**

*See* HINDU WIDOW

1. ——————————— *Mortgage by widow of part of the estate—Legal necessity—Presumption—Reversioner* Alienation by way of mortgage by a Hindu widow, as heiress, of a portion of the estate of her deceased husband without proof either of legal necessity or of reasonable enquiry and honest belief as to its existence, but with the consent of the next reversioner for the time being, will be valid and binding on the actual reversioner, if the presumption of legal necessity or of reasonable enquiry and honest belief raised by such consent is not rebutted by more cogent proof *Nobokishore Sarma Roy* v. *Hari Nath Sarma Roy, I. L. R. 10 Calc. 1102,* considered. *Bajrangi Singh* v. *Manokarnika Baksh Singh, I. L. R. 30 All 1 ; L. R. 35 I. A. 1,* referred to DEBI PROSAD CHOWDHURY *v.* GOLAP BHAGAT (1913) **I. L R. 40 Calc. 721**

2 ——————————— *Hindu widow—Compromise followed by an award settling disputes as to the property of various members of the family—Effect of such award on reversionary interests.* Where

HINDU LAW—WIDOW—*contd.*

the widow of one and the son of the other of two brothers, Hindus separated in estate, entered into a compromise, which was found to be reasonable in its nature, concerning the partition of the property of the two brothers, and an award was made on the basis of such compromise, it was *held* that it was not open to the reversioner to dispute the validity of the compromise and award, specially when a considerable time had elapsed and most of the property had changed hands meanwhile. *Khunni Lal* v. *Gobind Krishna Narain, I L. R 33 All 356,* and *Mohan Lal* v. *Chuttan Singh, 10 All. L. J. 101,* followed BIHARI LAL *v* DAUD HUSSAIN, (1913) **I. L. R 35 All. 240**

3. ——————————— *Hindu widow—Powers of alienation possessed by a Hindu widow in respect of the property of her husband—Transfer of debt secured by a mortgage.* A Hindu widow in possession as such of property which had been the property of her husband in his life-time can always alienate her life interest in such property and a transfer by her of the corpus of the property without legal necessity and not for a pious purpose, is not void but only voidable at the instance of the reversioners. A Hindu widow, without legal necessity, transferred a mortgage debt and the security therefor which had been the property of her late husband, to *D* who thereafter sued to recover the debt by sale of the mortgaged property : *Held,* that the transferee acquired all the rights which the widow had and could exercise during her life-time in respect of the mortgage, one of these being to recover the debt. *Bijoy Gopal Mukerji v Krishna Mahishi Debi, I. L. R. 34 Calc 329,* referred to DURGA KUNWAR *v.* MATU MAL (1913) . **I L. R. 35 All. 311**

4. ——————————— *Suit for declaration that mortgage by widow did not effect plaintiff's reversionery rights—Plaintiffs not nearest reversioners—Pleadings.* Where plaintiffs sued as next reversioners for a declaration that a mortgage executed by a Hindu widow was not binding on them, and it was found that as a matter of fact even the nearest of the plaintiffs could only succeed to the estate if four males and one female died in his life time : *Held,* that the plaintiffs ought not to have a decree MEGHU RAI *v.* RAM KHELAWAN RAI (1913) . **I. L. R. 35 All. 326**

5. ——————————— *Caste Disabilities Removal Act, s. 1—Hindu Widows' Remarriage Act (XV of 1856), s. 2—Hindu widow—Conversion and subsequent remarriage—Widow's estate not divested —Hindu law.* The widow of a separated Hindu became a convert to Mahomedanism and married a Mahomedan . *Held,* that the widow did not thereby lose her interest in the property of her late husband in view of the provisions of Act XXI of 1850 nor did section 2 of the Act XV of 1856 affect the situation inasmuch as that section applied to *Hindu* widows only *Khunni Lal* v. *Gobind Krishna Narain, I. L R. 33 All. 356,* followed. *Matungini Gupta v Ram Rutton Roy,*

**HINDU LAW—WIDOW—*concld.***

*I. L R 19 Calc 289*, dissented from. ABDUL AZIZ KHAN *v.* NIRMA (1913) **I. L. R. 35 All. 466**

6. ——— *Hindu widow—Investments by widow from income of husband's estate—Whether or not such investments become accretions to the husband's estate* Where immovable property is purchased by a Hindu widow in possession as such of the estate of her late husband out of the income of that estate, such property does not necessarily become an accretion to the husband's estate The widow has full power to dispose of it during her life-time, and it is only when she manifests during her life-time a clear intention to treat it as an accretion to her husband's estate, or allows it at her death to remain undisposed of, that such property will become part of that estate WAHID ALI KHAN *v* TORI RAM (1913) **I. L. R 35 All. 551**

7. ——— *Widow's estate—Nature of interest arising out of contract with surviving co-parceners* *P* and *C* were undivided brothers of a joint Hindu family. *P* died *C* entered into an agreement with *L*, the widow of *P*, whereby *P* was to receive a younger son of *C* (if such should be born) in adoption or in default a half share in the family properties. No adoption took place *C* died leaving his widow *B* *B* and *L* effected a partition of the properties in equal shares The plaintiff was a daughter of *P* by another wife *Held*, that the half share taken by *L* was a widow's interest and that it would pass on her death to her husband's reversioners and the plaintiff being the nearest reversioner was entitled to succeed. A woman's estate can be obtained by a Hindu female not only by inheritance but also by contract of parties, by a grant, or by prescription. VENGAMMA *v* CHELAMAYYA (1913) **I L. R. 36 Mad. 484**

**HINDU LAW—WILL.**

1. ——— *Construction of will—Period of distribution of property bequeathed—Succession Act (X of 1865), s 111—Hindu Wills Act (XXI of 1870)—Absolute gift to son on attaining majority—Bequest contingent on son's death which did not happen till after period of distribution.* The right of the appellant to succeed to the *shebaitship* of certain *debutter* properties depended on the construction of his grandfather's will, and on the nature of the right which his father took in those properties. After declaring the properties to be *debutter* for the maintenance of the family idol, the testator in his will stated that "my present begotten son" (the appellant's father) "will be *shebait* for performance of the ceremonies." And after making provision for his own death during the minority of his son, in which case his widow was to be the *shebait* as his son's guardian, the testator continued, "and my son on attaining majority will personally conduct the work of the *sheba*. God forbid, if during my life or after my death, my said son dies, then my widow will be the *shebait*, and after her my daughters by her"

**HINDU LAW—WILL—*contd.***

(the respondents) "will be *shebaits* . . . . . Moreover, for carrying out the directions under this will until my minor begotten son comes of age, my wife" (and two male persons named), "will be executors . . . . . and on my said begotten son attaining majority the said executors will be discharged, and the said son by continuing in his present faith will go on performing the *sheba*, etc, of the said idol" *Held* (reversing the decision of the High Court), that, on the true construction of the will, there was an absolute gift of the *shebaitship* to the appellant's father on his attaining his majority, and it was not cut down by anything that followed There were provisions in case of his death as a minor, but no cutting down of the absolute gift to him. The appellant therefore, and not the respondents, succeeded on the death of the testator's son, who had attained his majority and held the *shebaitship* until his death TRIPURARI PAL *v* JAGAT TARINI DASI (1912) . . **I L. R. 40 Calc 274**

2. ——— *Testator's direction to his brother to get his daughters married—Betrothal by the brother—Marriage of the daughter by her mother and maternal uncle with another person—Suit by the brother to recover damages which he had to pay to the betrothed husband for breach of contract—The right of the testator's brother to give in marriage no more than the right under the Hindu law and subject to the limitations of that law—Right of the mother as legal guardian* A testator in his will directed that his brother should get his minor daughters married with the testator's money The brother accordingly got one of the daughters betrothed to *H* Subsequently the girl's mother and maternal uncle got the girl married to *C*. The testator's brother, thereupon, brought a suit against the mother, maternal uncle and *C* to recover damages which he had to pay to *H* for breach of contract *Held*, that the suit was not maintainable The plaintiff's right under his brother's will was not absolute and exclusive. The right was no more than the right under the Hindu law, and subject to the limitations under that law According to the next of *Yajnyavalkya* the persons entitled to give a girl in marriage were "the father, paternal grandfather, brother, kinsmen (*sakulya*) and mother" in the order stated The text only dealt with the bare right to give a girl in marriage. It did not deprive the mother of her right of legal guardianship but only specified who could make a gift in marriage. The paternal male relations of the girl were placed above the mother for the purpose of the gift, because women were dependent and they could not perform certain ceremonies essential to or usual in a marriage. The text did not say that the mother was to have no voice at all and might be altogether set at naught where there were paternal male relations of the girl competent to give her in marriage. BAI RAMKORE *v.* JAMNADAS MULCHAND (1912) **I. L. R. 37 Bom. 18**

3. ——— *Life-estate to widow, remainder to another upon condition to be*

**HINDU LAW—WILL**—*contd*

*fulfilled —Sale by widow with concurrence of latter before condition fulfilled—Condition made impossible of performance—Ultimate conditional bequests in favour of specified relatives—Heir's right to succeed in the absence of proof that no legatee can take—Bequest to husband of unmarried son's daughter married in testator's life-time, if valid* A testator by his will conferred a life-estate in most of his properties to his widow *B* and provided that if *B* adopted a son the said properties would on her death pass to him, but that if no son was adopted the properties would pass absolutely to *N* provided he lived in the testator's ancestral house, but that if *N* or his son or other descendant failed to live in the ancestral house the properties would pass to other specified relatives of the deceased, subject to the like condition and on the failure of any such relatives to fulfil such condition to any agnate and, failing agnates, to any Brahmin who would live in his ancestal house. No son was adopted and in *B's* life-time *N* joined *B* to sell the ancestral house of the testator to a stranger. *Held*, that the condition of residence in the house was not invalid so far as it affected *N* although it was attached to the gift of an absolute estate That *N's* interest being a contingent one which fell into possession on the death of the widow the condition or residence had to be satisfied at the date of the widow's death, and that *N* not having lived there at that time and having made it impossible for him to live there by joining in the sale of the house, he was not qualified to take under the will *Held*, that although the ultimate gifts over to agnates and to a Brahmin might be invalid for uncertainty, the other intermediate gifts were valid and in the absence of proof that there was no other person qualified to take under the succeeding clauses of the will upon *N's* failure, the plaintiffs who claimed as heirs could not recover. A bequest by a Hindu in favour of the husband of a son's daughter unmarried at the date of the will but married in the testator's life-time would be valid SHYAMA CHARAN BHUTTACHARYA *v* SARUP CHANDRA SEN (1912) **17 C W. N. 39**

**4** ——— ——— *Perpetuities, rule against—Hindu Wills Act (XXI of 1870), ss. 2, 3—Indian Succession Act (X of 1865), ss 101, 102—Gift to grandsons after all of them have attained majority, if valid—Primary and secondary intention—Gift, if may be sustained as to grandsons in existence at testator's death* Upon the construction of a will whereby a Hindu testator directed his executor to divide his residuary estate "when my grandsons may attain their age" into five shares (he having had five sons) and "give away the same to their respective sons, that is to say my grandsons," the High Court had *held* that the distribution was to take place only after all the sons who might be born to the sons of the testator should have attained their majority, and that such a disposition was invalid under s. 101 read with s 102 of the Indian Succession Act which by s 2 of the Hindu Wills Act are applicable to Hindu wills; that s. 3 of the Hndu Wills Act, although it might have the effect of invalidating a disposition which is valid under s. 101 of the Succession Act, cannot have the effect of validating a disposition which is invalid under that section; that the disposition would be invalid under s. 101 read with s. 102 even if the grandsons referred to in the will meant grandsons who were in existence at the testator's death; that the disposition should not be given effect to in favour of the three grandsons who were in existence at the testator's death on the assumption of a supposed secondary intention on the part of the testator absolutely inconsistent with his intentions as expressed in the will, and that as regards the subject matter of this disposition there was an intestacy Appeal from this decision was dismissed by the Judicial Committee P V SUBRAMANIA PILLAI *v* P. V. MURUGESA PILLAI (1912) **17 C. W. N. 488**

**HINDU LAW—WOMAN'S STATE**

**1.** ——— ——— *Alienation by Hindu mother—Property inherited from son—Legal necessity—Spiritual benefit—Installation of idol and endowment of temple—Bonâ fide dedication—Disproportion between property dedicated and cost of maintenance.* A Hindu widow has, at the highest, only a very limited power of alienating property for religious purposes and that only when it would conduce to the spiritual welfare of her deceased husband. The installation of an idol and the endowment of its temple do not come within the category of acts which conduce to the spiritual benefit of the deceased husband The mother's power of promoting the spiritual benefit of the son whose property she inherits being less than that of a widow to promote the spiritual welfare of her husband, the power of the former to alienate property so inherited for the purpose of installing an idol and endowing its temple may be less but is certainly not greater than the power of the widow to alienate her husband's property for a similar purpose. In the absence of authority from her husband, dedication of property by a widow for religious purposes conduces to her own spiritual benefit only. She cannot, as heiress to her son, alienate property inherited from him for her own spiritual benefit *Held*, on the evidence, that a deed of endowment in favour of family idols did not represent a *bonâ fide* dedication, regard being had, amongst other circumstances, to the great disproportion between the costs of the maintenance of the endowment and the amount of money which was allocated to it under the settlement *Kartik Chandra* v *Gour Mohan, 1. W. R. 48, Collector of Masulipatam* v. *Cavelly Venkata Narayanappa, 8 Moo I. A 500, Lukhi Narain* v. *Kubali, Boradaile's Rep. 612, Ram Kawal* v. *Ram Kishore, I. L. R. 22 Calc 506,* referred to HARMANAGE NARAIN SINGH *v.* RAM GOPAL ACHARI (1913) **17 C W. N. 728**

**2.** ——— ——— ——— *Sale of portion with consent of presumptive reversioner, if passes absolute title—Presumption of propriety.* The mere assent of the immediate reversioner to a sale by a

**HINDU LAW—WOMAN'S STATE—** *concld.*

Hindu female of a portion of an estate inherited by her, is not sufficient to confer an absolute title on the alienee Such assent merely raises a presumption of the propriety of the transaction *Debi Prosad* v *Golab Bhagut, 17 C. W. N 701 · 17 C. L J. 499,* followed. *Nabo Kishore Sarma* v *Hari Nath Sarma, I. L. R 10 Calc. 1102,* referred to. *Pulin Chandra* v. *Bolai Mundal, I. L. R. 35 Calc. 939 : 12 C. W. N. 837,* overruled. GOPESHWAR MISRA *v.* DURGAMANI BAISHNABI (1913)
**17 C. W. N. 1062**

**HINDU WIDOW**

*See* HINDU LAW—WIDOW.

*See* HINDU LAW—WOMAN'S ESTATE

*See* SUCCESSION CERTIFICATE ACT (VII OF 1889), S 9. **I L. R. 35 All. 249**

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS. 107, 111
**I. L. R. 35 All. 527**

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS 107, 111, 112
**I. L. R. 35 All. 548**

1. ——————————— *Alienation—Setting aside alienation—Compensation to defendant for improvements—Evidence of relationship—Statement in will of widow—Conjectural suggestions as to will in argument in lieu of evidence—Suggestions never made in cross-examination of writer of will* The respondent on the death of a Hindu widow brought a suit as the next heir of her husband to set aside an alienation, made by the widow in favour of the appellant, of property consisting of a house and compound at Delhi. The respondent who was the son of the daughter of the husband by a former wife (though this was denied by the appellant), produced a will made by the widow five years before the suit, in which she stated "I have no issue or any near relative Mathu Mal (the respondent) is related to me as a daughter's son (*rishte men nawasa*) and Khairati Lal as my husband's younger brother. These are my relatives on my husband's side." The oral evidence as to the respondent's title was found by their Lordships to be meagre and conflicting. *Held* (affirming the decision of the Chief Court), that the statement in the will was, under the circumstances, conclusive of the respondent's relationship. The widow was the proper person to make such a statement of fact, which was within the scope of her own knowledge; she put forward the respondent in the will as the first person in the order of choice for the performance of the funeral ceremonies; her statement was corroborated by the other relative mentioned in the will, who was a witness in the case, and whose evidence on the matter was against his own interest, and the statement was uncontradicted by any reliable evidence. Mere conjectural suggestions made in argument that the will had been executed for the purpose of supporting a future claim to be made by the respondent, could not be entertained by their Lordships in lieu of evidence, especially when the writer

**HINDU WIDOW—***concld.*

of the will was himself a witness in the case and no such conjectural considerations were suggested to him in cross-examination. In case the respondent succeeding, the appellant claimed the value of improvements made by him to the property while he was in possession of it, which included a temple (Rs. 2, 700), a well (Rs. 300), an upper storey to the house (Rs. 2,500 ), and repairs to the house (Rs. 1,500), the whole amounting to Rs 7,000. *Held* (affirming the decision of the Chief Court and for the reasons given by it), that Rs. 1,400, which represented half the expenditure by the appellant, on the well and the upper storey to the house, should be allowed as compensation for the improvements. The real question was, had they enhanced the market value of the property ? It was doubtful whether the erection of the temple had done so, and it had not been contended that it had KIDAR NATH *v.* MATHU MAL (1913)
**I. L. R. 40 Calc. 555**

2. —— ——— - —— - - *Decree for rent against, if can be executed against her husband's estate in the hands of the reversioner—Widow described in decree as administratrix* The mere fact that the judgment-debtor is described in the decree as administratrix is not conclusive that it binds the estate A decree obtained against a Hindu widow for rent of a tenure held by her as her husband's heir, is a personal decree and cannot be executed against the estate of her husband in the hands of the reversionary heir after her death. *Kristo Gobindo* v *Hem Chandra, I L. R 16 Calc. 511,* and *Brojo Lal* v. *Jibon Krisana, I L. R. 26 Calc. 285,* followed. Although where a decree has been obtained upon a fair trial in a suit against a Hindu widow that decree is effectual and operative as against the reversionary heir unless the decree can be successfully impeached on some special ground, such decree operates as *res judicata* only in respect of questions which could arise in the litigation and were tried by the Court. *Radha Kishen* v *Nourtan Lal, 6 C. L. J. 490, 528,* referred to BIRESHUR DAS DEY *v.* KAMAL KUMAR DUTT (1912)
**17 C. W. N. 337**

**HINDU WIDOWS' REMARRIAGE ACT (XV OF 1856).**

——————— **S. 2—**

*See* HINDU LAW—WIDOW.
**I. L. R. 35 All. 466**

**HINDU WILLS ACT (XXI OF 1870)**

*See* HINDU LAW—WILL
**I. L. R. 40 Calc. 274**

**HOMESTEAD LAND.**

*See* ADVERSE POSSESSION
**I. L. R. 40 Calc 173**

*See* JURISDICTION OF CIVIL COURT
**I. L. R. 40 Calc. 402**

**HOUSE-BREAKING.**

*See* PENAL CODE (ACT XLV OF 1860), SS. 457, 511 **I. L. R. 37 Bom. 553**

**HUNTER'S STATISTICAL ACCOUNTS.**

——— *Admissibility in private litigation.* Reference cannot legitimately be made to statements in Hunter's Statistical Accounts for the purpose of establishing the existence of Private rights. AHMODI BEGUM *v.* TARAKNATH GHOSE (1913) . . . **17 C. W. N. 1173**

**HURT.**

*See* CHARGE **I. L. R. 40 Calc. 168**

*See* CUMULATIVE SENTENCES **I. L. R. 40 Calc. 511**

**HUSBAND AND WIFE.**

*See* CONTRACT ACT (IX OF 1872), S. 25. **I. L. R. 37 Bom. 280**

——— *Restitution of conjugal rights demanded and refused—Inaction for more than two years—Suit for restitution barred under Limitation Act (XV of 1877), Art 35—Limitation Act (IX of 1908)—General Clauses Act (X of 1897), s. 6.* On 11th July 1906 the plaintiff sent his wife (who had left him) a notice demanding restitution of conjugal rights The demand was refused on 19th July 1906, but the plaintiff took no further action for more than two years, and eventually on 20th July 1911 filed a suit for restitution. *Held,* that this particular form of remedy had become barred under Article 35 of the old Limitation Act (XV of 1877). *Dhanjibhoy Bomanji* v *Hirabai I. L. R. 25 Bom. 644,* followed. *Held,* further, that having become so barred, it could not be revived by the passing of the new Limitation Act (IX of 1908). The provisions of s. 6 of the General Clauses Act (X of 1897), discussed. MAHOMED MEHDI *v.* SAKINA BAI (1912) **I. L. R. 37 Bom. 393**

**HYPOTHECATION.**

*See* ADVERSE POSSESSION. **I. L. R. 36 Mad. 97**

## I

**ILLEGAL CESS.**

*See* ABWAB . **I. L. R. 40 Calc 806**

**ILLEGAL OR IMMORAL DEBTS.**

*See* HINDU LAW—ALIENATION. **I. L. R. 40 Calc. 288**

**IMPARTIBLE PROPERTY.**

*See* OUDH ESTATES ACT (I OF 1869), SS. 2, 3, 8, 10, 22. **I. L. R. 35 All 391**

**IMPARTIBLE ZAMINDARI.**

——— *Alienation beyond alienors' life-time, validity of—Custom of inalienability, effect of —Regulation XXV of 1802* In the absence of proof of a special custom of inalienability, the zamindar of an impartible zamin has power to alienate the zamin for a legitimate family or other necessary purpose beyond his life-time.

**IMPARTIBLE ZAMINDARI—*concld.***

The estate held by him is not analogous to that of an estate-tail as it originally stood upon the Statute *de Donis* [Statute of Westminster II (1285) 13 Edw. I, c. 1]. The law relating to estates held in impartible zamindaris reviewed. Where the subject of a court-sale was stated to be " the right, title and interest " of the zamindar there is no presumption that what was intended to be sold was merely the life interest of the zamindar in the zamin. AVALAPPA NAICKER *v.* MURUGAPPA. CHETTIAR (1913) . **I. L. R. 36 Mad. 325**

**IMPROVEMENTS.**

*See* COURT SALE **I. L. R. 36 Mad 194**

*See* MALABAR TENANT'S IMPROVEMENTS ACT, 1900, SS. 5, 6, 9 TO 18. **I. L. R. 36 Mad. 410**

**INADVERTENCE.**

*See* REFUND OF COURT-FEE. **I. L. R. 40 Calc. 365**

**INAM LAND**

——— acquisition of—

*See* RIGHT OF SUIT. **I. L. R. 36 Mad. 373**

**INCOME-TAX ACT (II OF 1886).**

*See* CERTIORARI .**I. L. R. 36 Mad 72**

**INDEMNITY BOND.**

*See* MAHOMEDAN LAW—WAKF. **I. L. R. 35 All. 68**

**INDIA COUNCILS ACT 1861 (24 & 25 VICT., C. 67).**

——— s. 22—

*See* JURISDICTION OF CIVIL COURT. **I. L. R. 40 Calc. 391**

**INDIAN INSOLVENCY ACT (11 & 12 VICT, C. 21).**

*See* PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS. 6, 27, 36, 121. **I. L. R. 37 Bom. 464**

**INDIAN LEGISLATURE.**

*See* PROCESSION **I. L. R. 40 Calc. 470**

**INFANT PARTNER.**

*See* SALE OF GOODS **I. L. R 40 Calc. 523**

**INHERENT POWERS OF HIGH COURT**

*See* STAY OF EXECUTION. **I. L. R. 40 Calc. 955**

**INHERITANCE.**

*See* HINDU LAW—STRIDHAN **I. L. R. 40 Calc. 82**

**INJUNCTION.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 80 . **I. L. R. 37 Bom. 247**

**INJUNCTION**—*concld*

*See* CIVIL PROCEDURE CODE (1908), O. XXXIV, R 1 ; O. XLIII, R. 1. **I. L. R. 35 All. 425**

*See* EASEMENTS . **I. L. R 36 Mad. 11**

*See* LANDLORD AND TENANT **I L. R. 35 All. 292**

*See* TRADE-NAME **I. L. R. 40 Calc. 570**

——— prayer for—

*See* COURT-FEE **I. L. R. 40 Calc. 245**

——— suit for—

*See* MAMLATDARS' COURTS ACT (BOM. ACT II OF 1906), S 23 **I. L. R. 37 Bom. 595**

**INJURY.**

*See* TRADE-NAME **I. L. R. 40 Calc. 570**

**INSOLVENCY.**

*See* CIVIL PROCEDURE CODE, 1882, CH. XX. . **I. L. R. 35 All. 402**

*See* INDIAN INSOLVENCY ACT (11 & 12 VICT. c 21)

*See* PROVINCIAL INSOLVENCY ACT (III OF 1907).

*See* RECEIVER **I. L. R. 40 Calc. 678**

——— of purchaser—

*See* SALE OF GOODS **I. L. R. 40 Calc. 523**

——— *Adjudication effect of order of—Property situate at Delhi attached by order of District Court of Delhi Title of Official Assignee —Presidency Towns Insolvency Act (III of 1909) ss 17, 126—Auxiliary aid—Provincial Insolvency Act (III of 1907), s. 50* Under s. 17 of the Presidency Towns Insolvency Act, on the making of an order of adjudication by this Court, the property of the insolvent situate in every part of British India vests in the Official Assignee of Bengal. *Official Assignee, Bombay*, v. *Registrar, Small Cause Court, Amritsar, I L R. 37 Calc. 418 ; L R 37 I. A. 86*, followed Where prior to the order of adjudication by this Court, certain properties at Delhi belonging to the insolvent, were attached under degrees of the District Court of Delhi, and the subsequent application of the Official Assignee of Bengal for realisation of the insolvent's assets so attached was refused by the District Judge, and the properties were thereafter sold in execution and the sale proceeds brought into the District Court, an order was made under s. 126 of the Presidency Towns Insolvency Act requesting the District Judge of Delhi to act in aid under s 50 of the Provincial Insolvency Act *In re* JEWANDAS JHAWAR (1912) **I. L. R. 40 Calc. 78**

**INSOLVENCY RULES, BOMBAY.**

——— rule 37—

*See* PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909), SS 6 27, 36 AND 121. **I. L. R. 37 Bom. 464**

**INSTALMENT.**

*See* LIMITATION ACT (IX OF 1908) SCH. I, ART. 75. **I. L. R. 35 All. 435**

**INSTALMENTS.**

——— power to grant—

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879) S 20. **I. L. R. 37 Bom. 486**

**INSTRUCTIONS TO COUNSEL**

——— *Charges of misconduct by Counsel—Reasonable grounds—Privilege against Court—Disciplinary action against Counsel* The Court is entitled to ask counsel, who, during the conduct of a case makes charges of misconduct, whether he makes the charges on instructions, and, if so, on whose It is not sufficient to plead instructions. Counsel have responsibility in the matter. and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court The latter cannot use them as evidence in the case, and for the purpose of the trial would have to treat them as confidential, but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912) **I L. R. 40 Calc. 898**

**INSURANCE.**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882, AS AMENDED BY ACT II OF 1900), S. 130 **I. L. R. 37 Bom. 198**

——— *Damage by fire—Possession of Insurance Company and their acts after fire is extinguished—Damage to machinery of mill by water used to extinguish fire—Omission to protect or clean machinery—Arbitration—Evidence taken by arbitrators alleged to be outside scope of reference—Petition to Court to revoke submission—Arbitration Act (IX of 1890), s 10.* The provisions in virtue of which, under the conditions of a policy, an Insurance Company takes and holds possession of premises damaged by a fire, are for the purpose of enabling it to minimise the damage. As it has to bear the loss it is, more than anyone, directly interested in doing everything for the best, not as a duty to the insured, but in its own interest. Its powers are of the nature of a privilege to do that which is most for its own benefit under the circumstances so as to reduce the loss After a fire in October 1906 at the Victory Mills Bombay, which then belonged to the appellant, he sent in his claim to the respondents, who took possession of the premises under powers reserved to them in that behalf in the policy, and retained possession for a considerable period for salvage purposes. The assessment of the damages was disputed

**INSURANCE**—*concld.*

and the matter was in accordance with the terms of the policy referred to arbitration, in the course of which the appellant tendered evidence to prove that the machinery was seriously damaged not only by the actual fire, but owing to the water used to extinguish the fire being allowed to remain on it, the injury in that way being progressive The evidence was objected to on the ground that damage so caused to the machinery did not come within the loss insured against in the policy, but that the liability for damage to the property ceased when the fire was extinguished The arbitrators admitted the evidence, whereupon the respondents petitioned the High Court to revoke the submission to arbitration on the ground that the arbitrators had exceeded their jurisdiction in admitting evidence, which would only relate to damage from some tortious act of the respondents which was outside the reference to arbitration. The Judge of the High Court, before whom the matter came, made no order on the petition being of opinion that the arbitrators had decided nothing by admitting the evidence, and that there was no reason to interfere with their action The respondents appealed and the appeal was allowed, the appellate Bench of the High Court expressing in its decree an opinion that the jurisdiction of the arbitrators extended only to the dispute relating to loss and damage from fire under the policy, and not to the question of any loss or damage alleged to have arisen from the neglect of the respondents to take care of the machinery after the fire had been extinguished, and the respondents to had entered into possession of the premises *Held* (reversing the decision of the Appellate High Court and restoring that of the Original Court), that the finding that the loss was to be estimated from the condition of the machinery at the time the fire was extinguished, was erroneous There was no question of tort on the part of the respondents They may have thought it was not worth while to spend money in drying the machinery, but right or wrong they unquestionably had full power to take the course which in fact they did take But having taken possession of the premises and done what in their opinion was wisest to minimise the damage, they could not say that the actual damage done was not the natural and direct consequence of the fire AHMEDBHOY HABIBHOY *v* BOMBAY FIRE AND MARINE INSURANCE COMPANY . **I. L. R. 37 Bom. 183**

**INSURANCE COMPANY.**

*See* TRADE-NAME.
**I L. R. 40 Calc. 570**

**INTENTION.**

*See* PENAL CODE ACT (XLV OF 1860), SS. 300 AND 325
**I. L. R. 35 All. 329**

——— to deceive—

*See* TRADE-NAME.
**I. L. R. 46 Calc. 570**

**INTEREST.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SCH III, S 7 (1) (*b*), SS. 69, 70 . **.I. L. R. 37 Bom 32**

*See* EXORBITANT INTEREST.

*See* LIMITATION **I L. R. 37 Bom. 326**

*See* LIMITATION ACT (IX OF 1908), S 20 **I. L. R. 35 All. 378**

——— grounds for reduction of—

*See* INDIAN CONTRACT ACT
**I. L. R 36 Mad. 533**

——— *Usufructuary mortgage —interest not stipulated for—Charge in the nature of mortgage must be in writing and registered.* Where no interest is stipulated for in a mortgage bond, no interest is recoverable A charge in the nature of mortgage, whether for principal or interest, must be expressed in writing and registered, and cannot be raised by implication *Kuttiumma v Madhava Menon, 11 Mad L J. 186*, followed, *Imdad Hasan v Badri Prasad, I. L R 20 All. 401*, distinguished MAKBUL ALI *v* ALI AHMAD (1913) . . . **I. L. R. 40 Calc. 514**

**INTEREST POST DIEM.**

*See* MORTGAGE **I. L. R. 35 All. 534**

**INTERLOCUTORY ORDER.**

*See* CIVIL PROCEDURE CODE, 1908, O. XX, R 18 . . **I. L. R. 35 All. 159**

**INTERROGATORIES.**

——— *Admissibility of interrogatories—Inadmissibility of certain questions as interrogatories though admissible in cross-examination —Interrogatories obviously designed to assist in fishing up a case—Defence of wagering—Inadmissibility of interrogatories by the parties raising defence of wagering as to the general business transactions of the opponent apart from the particular transactions in suit* The mere fact that questions would be admissible in cross-examination of a witness, does not make them good as interrogatories Interrogatories must not be exhibited unreasonably or vexatiously, nor be prolix, oppressive, unnecessary or scandalous Nor should interrogatories be allowed which are sought to be administered obviously for the purpose of fishing out a case. The Court will, in cases where the defence of wagering is set up, refuse to allow the party setting up this defence to interrogate his opponent generally as to his business transactions apart from the particular transactions in suit, on the ground that it is manifestly unfair to compel a man to disclose his general dealings on the chance that thereby his opponent may discover something that will support his case. BHAGWANDAS PARASHRAM *v* BURJORJI RUTTONJI (1912).
**I. L. R. 37 Bom 347**

**INVENTORY.**

*See* ADMINISTRATION.
**L. R. 40 I. A. 236**

**IRREGULARITY.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, R 1
**I. L. R 37 Bom. 682**

*See* JURISDICTION OF CRIMINAL COURT.
**I. L. R. 40 Calc. 360**

**ISSUES.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S 11 **I L. R 37 Bom. 563**

*See* PRELIMINARY DECREE.
**I. L. R. 37 Bom. 60**

*Several issues should not be tried together.* The practice of trying all the issues in a case together defeats the object of the law in requiring the various issues to be kept separate and distinct, and cannot but lead to confusion RAJANI KANT MUKERJEE *v* RAM DULAL DAS (1912) . . **17 C. W. N. 55**

## J

**JALKAR.**

*Rights in a river—Bed of a river, meaning of—Hunter's Statistical Accounts if can be referred to for establishing existence of private rights Per* JENKINS, *C. J—Jalkar* rights of a river extend to waters in the river bed though they are not connected with the waters of the flowing stream throughout the year. Where the right of fishery is in a river the Court has to be satisfied on a consideration of all the material facts and conditions whether it can fairly and reasonably be said that the waters over which the fishery is claimed are a part of the river *Per* HARINGTON, *J.*—The tract in dispute was the bed of the river because it was habitually and regularly covered by the river for a substantial portion of the year in the ordinary course of nature. *Per* MOOKERJEE, *J*—The bed of a river is the whole of what contains its waters when most swollen in whatever time of the year without leaving its channel and overflowing its banks. The grantee of a fishery right in the river is entitled to fish in all waters comprised within the banks of the river, and the circumstance that a particular sheet of water may, during part of the year, be disconnected from the flowing stream or permanent current does not affect the rights of the grantee. AHMODI BEGUM *v* TARAKNATH GHOSE (1913). . . **17 C. W. N. 1173**

**JEWISH LAW.**

*Marriage Custom—"Ketuba," legal effect of—Rights of wife* In a suit brought by a Jewish lady, married in Calcutta, for the recovery from her deceased husband's estate of the sum mentioned in a *ketuba*, executed on the occasion of their marriage · *Held*, that the *ketuba* was a necessary but formal incident of the marriage contract and ceremonial, and created no such right in favour of the widow. JOSHUA *v.* ARAKIE (1912) . **I. L. R 40 Calc. 266**

**JOINDER OF PARTIES.**

*See* HINDU LAW—JOINT-FAMILY.
**I. L. R. 37 Bom. 340**

**JOINT FAMILY PROPERTY.**

*See* UNITED PROVINCES LAND REVENUE ACT (II OF 1901), SS. 107, 111, 112.
**I. L. R. 35 All. 548**

**JOINT HINDU FAMILY.**

*See* HINDU LAW—JOINT FAMILY.

*See* INSOLVENCY OF PURCHASER.
**I. L. R. 40 Calc. 523**

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS. 107, 111.
**I. L. R. 35 All. 527**

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901). SS 111, 112, 232(*k*).
**I. L. R. 35 All. 126**

**JOINT OWNERS**

*See* NOTICE . **I. L. R. 40 Calc. 503**

**JOINT PROPERTY.**

*See* LIMITATION ACT (XV OF 1877) SCH. I, ART. 127
**I. L. R. 37 Bom 64**

**JOINT TRIAL.**

*See* CHARGE . **I. L. R. 40 Calc. 318**

*See* CRIMINAL PORCEDURE CODE (ACT V OF 1898), S 337, CL (*3*).
**I. L. R 37 Bom. 146**

**JUDGMENT.**

*See* CIVIL PROCEDURE CODE, 1908, O. XX, R. 2 . **I. L. R. 35 All. 368**

*See* CIVIL PROCEDURE CODE, 1908, O. XLI, R. 11. **I. L. R. 37 Bom. 610**

**JUDICIAL PROCEEDING.**

*See* CHOTA NAGPUR TENANCY ACT, 1908, S. 27 . **I. L. R. 40 Calc. 518**

**JURISDICTION.**

*See* AGRA TENANCY ACT (II OF 1901), S. 95 . . **I. L. R. 35 All. 14**

*See* CIVIL AND REVENUE COURTS.
**I. L. R. 35 All. 464**

*See* CIVIL PROCEDURE, CODE, 1908, SCH. III, SS 7 (*1*) (*b*) 69, 70
**I. L. R. 37 Bom. 32**

*See* CIVIL PROCEDURE CODE, 1908, S 60.
**I. L. R 37 Bom. 415**

*See* CIVIL PROCEDURE CODE, 1908, S. 68, O. XXI, R. 100
**I. L. R. 37 Bom. 488**

*See* CIVIL PROCEDURE CODE, 1908, S. 92 . .I. L. R. 35 All. 459

*See* CIVIL PROCEDURE CODE, 1908, O. XXIII, R. 1.
**I. L. R. 37 Bom. 682**

**JURISDICTION**—*contd.*

*See* COLLECTOR **I. L. R. 40 Calc. 465**

*See* COMPLAINT, DISMISSAL OF. **I. L. R. 40 Calc. 444**

*See* COURT-FEE **I. L. R. 40 Calc. 245**

*See* COURT-FEE **I. L. R. 40 Calc. 615**

*See* COURT OF WARDS ACT (BOM. ACT (I OF 1905), S. 3 (*c*). **I. L. R. 37 Bom. 313**

*See* CRIMINAL PROCEDURE CODE, S 110. **I. L. R. 36 Mad. 96**

*See* CRIMINAL PROCEDURE CODE, S 125. **I. L. R. 35 All. 103**

*See* CRIMINAL PROCEDURE CODE, S. 179. **I L. R. 35 All 29**

*See* CRIMINAL PROCEDURE CODE, S. 195, CL 7 (*c*) . **I. L R. 36 Mad. 138**

*See* CRIMINAL PROCEDURE CODE, SS 517, 520 . **I. L. R. 35 All. 374**

*See* DIVORCE ACT (IV OF 1869), S. 3 (*2*). **I. L. R 37 Bom. 57**

*See* EXECUTION OF DECREE **I. L. R. 35 All. 119**

*See* GENERAL CLAUSES ACT (X OF 1897), S. 3(*25*) . . **I. L. R. 35 All. 156**

*See* HEREDITARY OFFICES ACT (BOM. ACT III OF 1874), SS. 11, 11A. **I. L. R. 37 Bom. 37**

*See* HIGH COURT, JURISDICTION OF.

*See* JURISDICTION OF CIVIL COURT.

*See* JURISDICTION OF CRIMINAL COURT.

*See* JURISDICTION OF DISTRICT COURT.

*See* JURISDICTION OF HIGH COURT.

*See* JURISDICTION OF SMALL CAUSE COURT

*See* LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT, S. 12. **I. L. R. 37 Bom. 494**

*See* MAMLATDARS' COURTS ACT (BOM. ACT II OF 1906), S 23. **I. L. R. 37 Bom 595**

*See* MESNE PROFITS **I. L. R. 40 Calc. 56**

*See* PENAL CODE, SS. 463, 471. **I. L. R. 36 Mad. 387**

*See* PENSIONERS ACT (XXIII OF 1871), S 4 . . **I. L. R. 37 Bom. 91**

*See* PRACTICE **I. L. R. 37 Bom. 144**

*See* PRELIMINARY DECREE **I L. R. 37 Bom. 60**

*See* REVENUE JURISDICTION ACT, BOMBAY (X OF 1876), SS 4 (*c*), 5 AND 6 **I. L. R. 37 Mad. 542**

*See* SANCTION FOR PROSECUTION. **I. L. R. 40 Calc. 37, 423**

**JURISDICTION**—*concld.*

——— DISMISSAL OF THE SUIT FOR WANT OF—

*See* CIVIL PROCEDURE CODE, 1908, S. 11 . . **I. L. R. 37 Bom. 563**

——— *Secretary of State for India in Council—'Dwell or carry on business or personally work for gain'—Letters Patent, 1865, s. 12.* This Court has no jurisdiction to entertain a suit brought against the Secretary of State for India in Council, where the cause of action wholly outside the ordinary original civil jurisdiction of this Court, on the sole ground that the Secretary of State for India in Council dwelt or carried on business or personally worked for gain within the local limits of Calcutta, the capital of India, at time of the institution of this suit. *Doya Narain Tewary* v *The Secretary of State for India, I. L R 14 Calc. 256*, followed. RODRICKS *v.* SECRETARY OF STATE FOR INDIA (1912) **I. L. R. 40 Calc. 308**

——— *Practice—Evidence in criminal case recorded by Assistant Sessions Judge—Judgment pronounced by Sessions Judge without rehearing the evidence.* Where a Sessions Judge decided a case upon evidence taken, not before him, but before an Assistant Sessions Judge, it was *held* that the Sessions Judge's judgment was *ultra vires* and a fresh trial was ordered. EMPEROR *v.* BADRI PRASAD (1912) . **I. L. R. 35 All. 63**

## JURISDICTION OF CIVIL COURT.

1. ——— *Right of suit against Secretary of State for India in Council—Burma Town and Village Lands Act (Burma Act IV of 1898), s. 41(b)—Act taking away power of subject to sue Government to determine any right to land—Power of Lieutenant-Governor in Council to pass Act—Legislation ultra vires—India Councils Act, 1861 (24 & 25 Vict., c. 67), s. 22—Government of India Act, 1858 (21 & 22 Vict., c. 106), ss 65, 66, 67.* *Held* (affirming the decision of the majority of a Full Bench of the Chief Court of Lower Burma), that section 41(*b*) of the Burma Town and Villages Lands Act (Burma Act IV of 1898), which enacted that "no Civil Court shall have jurisdiction to determine any claim to any right over land as against the Government," was *ultra vires* of the Lieutenant-Governor of Burma in Council, and therefore invalid. Section 22 of the India Councils Act, 1861 (24 & 25 Vict., c. 67), provides that the Governor-General in Council shall have no power "to repeal or in any way effect (amongst other matters) any provision of the Government of India Act, 1858 (21 & 22 Vict., c. 106) And the effect of section 65 of the latter Act which enacted that "all persons . . . shall and may have and take the same suits, remedies and proceedings, legal and equitable against the Secretary of State in Council of India as they could have done against the East India Company," was to debar the Government of India from passing any Act which could prevent a subject from suing the Secretary of State in Council in a Civil Court in any case in which he

JURISDICTION OF CIVIL COURT—*concld.*

could have similarly sued the East India Company The words could not be construed in any different sense without reading into them a qualification which is not there, and may well have been deliberately omitted. The question was not one of procedure, but of the power of the Government to take away by legislation the right to proceed against them in Civil Court in a case involving a right to land; and the suit in this case (for damages for interference with the respondent's property) was one which would have lain against the East India Company. SECRETARY OF STATE FOR INDIA *v.* MOMENT (1912)

**I L. R 40 Calc. 391**

2. ——— *Revenue Court—Bastu or homestead land—Rent, suit for—Chota Nagpur Tenancy Act (Beng VI of 1908), s 139 (3), cl. (a)* The plaintiffs brought a suit in the Civil Court against the defendant for recovery of arrears of *bastu* rent The defendant contended that as crops were grown on a portion of the *bastu* lands, this land was agricultural, and suits in respect thereof were triable exclusively by the Revenue Court under the Chota Nagpur Tenancy Act. *Held*, that the land in respect of which rent was claimed was *bastu* land, and consequently the suit was maintainable in the Civil Court. *Ramdhun Khan* v. *Haradhun Paramanick. 12 W. R 404, Kalee Kishen Biswas* v *Sreemulty Jankee, 8 W. R. 250*, and *Kumood Narain Bhoop* v. *Purna Chunder Roy, I L. R 4 Calc 547*, referred to MIDNAPORE ZAMINDARI Co LD., *v.* MUKTAKESHI DASI (1912) . . **I. L. R 40 Calc. 402**

JURISDICTION OF CRIMINAL COURT.

1. ——— *Order of discharge by the High Court in its original criminal jurisdiction, if bar to fresh proceedings—Criminal Procedure Code (Act V of 1898), s 190 (c)—Nolle prosequi—Practice* An order of discharge does not operate as a bar to fresh proceedings being taken before a competent Magistrate upon complaint or upon a police report, or under s 190 (*c*) of the Criminal Procedure Code *Mir Ahwad Hossein* v *Mahomed Askari, I. L R. 29 Calc. 726*, referred to. EMPEROR *v.* SHEIK IDOO (1912)

**I. L. R 40 Calc 71**

2. ——— *Complaint—Irregularity—Criminal Procedure Code (Act V of 1898), ss. 195, 476, 532, 537—Order for prosecution—Penal Code (Act XLV of 1860), s 211—False charge laid before the Police—Police Report—Judicial inquiry—Commitment to the Court of Session.* A conviction by the Court of Session cannot be set aside simply on the ground of a defect in the initiation of the proceedings in the commitment Court or on the ground of some irregularity in the commitment of proceedings more especially when that point was not raised in the lower Court. S. 532 of the Criminal Procedure Code would cure such a defect. *Haibat Khan* v. *Emperor, I. L R 33 Calc. 30*, distinguished *Abdul Rahman* v. *Emperor, 7 C. L J. 371*, and *Queen-Empress* v *A. Morton and Moorteza Ali, I. L R. 9 Bom 288*, referred to Recommendation for prosecution by a Police officer under s. 211 of the Penal Code comes within the meaning of the word 'complaint" as used in s 195 of the Criminal Procedure Code, as that section clearly contemplates prosecution at the instance of Police officers. DILAN SINGH *v.* EMPEROR (1912) **I L. R 40 Calc 360**

JURISDICTION OF CRIMINAL COURT—*concld.*

JURISDICTION OF DISTRICT COURT.

*See* GUARDIAN AND WARDS ACT

**I. L. R. 36 Mad. 39**

JURISDICTION OF HIGH COURT.

*See* HIGH COURT, JURISDICTION OF.

JURISDICTION OF SMALL CAUSE COURT.

*See* PROVINCIAL SMALL CAUSES COURTS ACT (IX OF 1887), SS 15, 33

**I L. R. 37 Bom. 675**

JURY, TRIAL BY.

1. ——— *Verdict by casting lots—Admissibility of the evidence of jurors and of admissions by jurors as to the mode of arriving at the verdict—Evidence of other persons in proof of the same, admissibility of* The sworn statements of jurors, and evidence of admissions by them as to the modes in which their verdict had been arrived at, are inadmissible But the evidence of other persons as to the same is receivable. *Owen* v *Warburton, 1 B & P. 326, Straker* v *Graham, 4 M & W 721, Burgess* v *Langley, 5 M. & G. 722*, and *Queen* v. *Murphy L R, 2 P C 535*, referred to The evidence of a witness that he saw one of the jurors put some pieces of crumpled up paper in his *alwan*, shake them up and take them out, is not sufficient to prove that the verdict was arrived at by casting lots EMPEROR *v.* HARKUMAR BARMAN ROY (1913)

**I L R. 40 Calc. 693**

2. ——— *Charge to the jury—Misdirection—Suggestion by the Judge of an alternative aspect of the case not put forward by the prosecution or defence — Omission to point out to the jury, specifically, the evidence against each accused and minute details—Criminal Procedure Code (Act V of 1898), ss. 297, 303—Rioting—"Violence", meaning of—Penal Code (Act XLV of 1860), ss 146, 147—Admissibility of evidence of a proceeding to keep the peace as part of the res gestæ.* Where the common object alleged in the charge as framed was to take forcible possession of the complainant's land and hut and to assault him and others named and the prosecution and defence each asserted exclusive possession and an attack by the opposite party. *Held*, that the Judge was not wrong in asking the jury to consider, as a third alternative an intermediate state of facts, *viz.*, that the complainant's party went to turn the accused party out of possession, was resisted and driven back,

**JURY, TRIAL BY—*concld.***

and that the latter then followed after the assaulted the former. *Banga Hadua* v *King-Emperor 11 C L. J 270, Queen* v. *Sabid Ali, 20 W. R Cr 5,* and *Wafadar Khan* v *Queen-Empress. I. L R* 21 *Calc 955,* distinguished. The word ' violence " in s 146 of the Penal Code is not restricted to force used against persons only, but extends also to force against inanimate objects The omission to point out to the jury, specifically, the exact evidence against each accused. is not a misdirection when the Judge has discussed the whole of it and has told them to be satisfied as to the guilt of, and to return an independent verdict against, each accused SAMARUDDI *v* EMPEROR (1912)

**I. L. R. 40 Calc. 367**

**JUSTICE, EQUITY AND GOOD CONSCIENCE.**

*See* WILL . **I. L. R. 35 All. 211**

## K

**KARAMKARI TENURE.**

*See* MALABAR LAW.

**I. L. R. 36 Mad. 380**

**KETUBA.**

——— **legal effect of—**

*See* JEWISH LAW.

**I. L. R. 40 Calc. 266**

**KHOJAS.**

*See* DOCTRINE OF SATISFACTION

**I. L. R. 37 Bom. 211**

**KHOTI SETTLEMENT ACT (BOM. I OF 1880).**

——— **ss. 33 (*c*), 40 (*a*), Rules I, III and VIII—**

*Occupancy tenant—Rent payable to the khot—Appraisement under the provision of r. VIII —Appraisement by the tenant.* R. VIII of the rules framed under s. 40 (*a*) of the Khoti Settlement Act (Bom Act I of 1880) is *intra vires,* and under the provision of that rule the khot can recover from the occupancy tenant rent either on the basis of appraisement made under the provision of that rule or on the basis of appraisement made by the tenant himself The Court is precluded from arriving at what it considers the reasonable amount of rent by the provision of the said rule. VINAYAK BALKRISHNA *v.* SITARAM JANARDAN (1912) . . . . **I. L. R. 37 Bom. 284**

**KIDNAPPING.**

*See* PENAL CODE (ACT XLV OF 1860), S. 90 . . **I. L. R. 36 Mad. 453**

**KOLI CASTE.**

*See* HINDU LAW—MARRIAGE.

**I. L. R. 37 Bom. 295**

## L

**LAND ACQUISITION**

1 ——— *Compensation—Apportionment of Compensation-money—Method of Assessment—Government as landlord, share of.* In assessing the amount of compensation due to the landlord, regard must be had to the question of how much the landlord is actually realising from the land The Government, in its capacity as landlord, is entitled as usual to a capitalisation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken, together with 15 per cent. for compulsory acquisition, and something more in respect of the possibility of the enhancement of the value of the land thereafter The Government is not entitled in law to a higher proportion, on the ground that in similar cases it has frequently received a higher proportion either by consent of the parties or otherwise. MANMOHAN DUTT *v* COLLECTOR of CHITTAGONG (1912) . . **I L. R. 40 Calc. 64**

2. ——— *Compensation—Government as Zemindar—Ryat—Under-ryat—Apportionment of shares—Bengal Tenancy Act (VIII of 1885), s. 85* Where a *ryat's* rent is fixed in perpetuity, it would be enough in apportioning compensation to capitalize this rent according to the rule laid down in *Dinendra Narain Roy* v. *Tituram Mookerjee, I L R. 30 Calc 891,* in order to arrive at the share due to the landlord, but where that is not the case, this rule will not be sufficient and some other means of calculation must be adopted. The Government as landlord are entitled to a compensation of as much rent as may be found to be payable in respect of the proportion of the holding that is taken together with 15 per cent for compulsory acquisition and something more in respect of the possibility of the enhancement of the value of the land hereafter. JAGAT CHANDRA DUTTA *v* THE COLLECTOR OF CHITTAGONG (1912) . . . **17 C. W. N. 1001**

**LAND ACQUISITION ACT (I OF 1894).**

——— *Apportionment of compensation between zamindar and occupancy ryot, principles of—Value of trees on land acquired to be given to whom.* In making an apportionment of compensation for land, awarded under the Land Acquisition Act, between a zamindar and his occupancy tenant, several factors are to be taken into consideration for determining their respective rights in the land such as expenses of cultivation, the fact that the cultivator has a home and a sphere for labour for himself and his family and the nature of the tenure. The principle of *Appasami Mudali* v. *Rangappa Nattan, I.L.R 4 Mad. 367,* applied. This decision which apportioned, on the facts of that case, three-fifths to the zamindar and two-fifths to the ryots was not intended to lay down a general rule applicable to all cases On the facts of this case their Lordships affirmed the decision of the lower Court which apportioned the compensation given for land in the ratio of

**LAND ACQUISITION ACT (I OF 1894)** —*contd.*

three-fifths to the ryots and two-fifths to the zamindar *Raja Bommadevara Venkatanarasimha Nayudu Bahadur* v. *Lakshmanna* (*Appeal No. 119 of 1893*), *Shama Prosunno Bose Mozumdar* v *Bholoda Sundari Dasi*, *I L R 28 Calc 146*, *Dinendra Narain Roy* v *Tituram Mukerjee*, *I L R 30 Calc 801*, *Bhupati Roy* v *Secretary of State*, *5 C L J 662*, and *Satis Chandra Chottopadhaya* v *Rai Jatindra Nath Cowdhury*, *7 C L J. 284*, distinguished. *Rajah Ramchandra Appa Rao Bahadur* v. *Sriramulu* [*Appeal No 118 of 1898 (unreported)*], referred to On a consideration of the whole evidence in the case, their Lordships affirmed the decision of the lower Court which gave to the ryots the whole value of the trees, (fruit) trees that stood upon the land which was compulsorily acquired *Narayana Ayyangar* v *Orr*, *I L R. 26 Mad. 252*, and *Bodda Goddeppa* v. *The Maharaja of Vizianagram*, *I. L. R 30 Mad. 155*. distinguished *Per* CURIA : Proceedings under part III of the Act are not by way of appeal and what is contemplated is a new enquiry by the District Judge BAMMADEVARA VENKATANARASIMHA NAIDU *v* SUBBARAYUDU (1913) . . . **I. L. R. 36 Mad. 395**

——— **proceedings under.**

*See* APPEAL TO PRIVY COUNCIL.

**I. L. R. 40 Calc. 21**

——— **ss 3 (*b*), 11, and 31 (*1*) and (*2*)**—*Compensation-money deposited in Court under s 31 (2)—Claim of Government to deduct poundage and fees paid by Government on such deposit out of the moneys deposited—Person interested in compensation-moneys—Compensation-money how to be apportioned among* Government sought under the Land Acquisition Act (I of 1894) to acquire a piece of land vested in the City of Bombay Improvement Trust under Schedule C of Bombay Act IV of 1898, and in the occupation of one Pestonji Jehangir under an agreement with the Improvement Trust under which he had the right to obtain a lease, of the land for 99 years when certain buildings had been erected in accordance with the terms of the said agreement The amount payable as compensation for the land was fixed by the Collector under s. 11 of the Act and was apportioned under the same section between the Government, the Improvement Trust and Pestonji Jehangir The amount awarded to the Improvement Trust was deposited by the Collector in Court under s 31 (2) of the Act and poundage and fees thereon were paid by Government. Pestonji Jehangir raised objections to the basis on which his claim has been valued, but this matter was settled by a consent decree. Government thereon claimed to deduct the amount of the poundage and fees paid by them from the amount deposited in Court : *Held*, that the Court had only power to direct payment of the compensation money without any deduction to the person or persons interested therein and consequently had

**LAND ACQUISITION ACT (I OF 1894)** —*contd.*

——— **ss. 3 (*b*), 11, and 31 (*1*) and (*2*)**—*concld*

no power to direct that a portion of such money should be refunded to Government as representing the poundage and fees paid by them when the money was deposited in Court. *Semble :* It is possible for a person to be interested in the compensation-money within the meaning of cl 11 of the Act without having an interest in the land in the legal sense of the term, and that the Collector and the Court should apportion the sum awarded among the persons interested as far as possible in proportion to the value of their interests, the market value of which might afford some guide as to the amount to be apportioned in respect of that interest, but only considered in relation to the total sum awarded as compensation PESTONJI JEHANGIR MODI, *In the matter of* (1911)

**I. L. R. 37 Bom. 76**

——— **s. 18** —*Money paid out to one party before reference heard—Power of Court to entertain reference—Inherent power to recover the money* The mere fact that the compensation-money awarded under the Land Acquisition Act has been paid out to a party, does not oust the jurisdiction of the Civil Court to entertain a reference duly made under s 18 of the Act Where the party to whom the money had been paid is found to have no title to receive it, the Court to which the reference has been made has inherent power to recall it In this case, the High Court directed that on failure of the party to restore the money within a time limited the other party would be entitled to recover it in execution. JOGESH CHANDRA RAY *v.* YAKUB ALI (1912)

**17 C. W. N. 1057**

——— **s. 30**—*Compensation—Mode of apportioning amount allotted as compensation between different interests* Where land, which is taken up under the Land Acquisition Act, belongs to two or more persons the nature of whose interest therein differs, the compensation allotted therefor must be apportioned according to the value of the interest of each person having rights therein so far as such value can be ascertained HIRDE NARAIN *v.* POWELL (1912) . **I. L. R. 35 All. 9**

——— **s. 31, cl. (*2*)**—

*See* SHEBAIT . **I. L. R. 40 Calc. 895**

——— **s. 54**—

1. ——————— *High Court—Decision by High Court on appeal—Appeal to Privy Council—Leave to appeal—Letters Patent, cl. 39.* An appeal, does not lie to His Majesty's Privy Council from the decision of the High Court on appeal under s 54 of the Land Acquisition Act (I of 1894). *Rangoon Botatoung Company, Ld.* v. *The Collector, Rangoon*, *I L. R 40 Calc. 21*, followed. SPECIAL OFFICER, SALSETTE BUILDING SITES *v.* DOSSABHAI BEZONJI (1913) . . **I. L. R. 37 Bom 506**

## LAND ACQUISITION ACT (I OF 1894) —*concld.*

### —— s. 54—*concld.*

2 —— *Order directing compensation to be invested in Government securities, if appealable—"Award" what is.* An order under s. 32 of the Land Acquisition Act by which the sum awarded as compensation is directed to be invested in Government securities, is an integral part of the award made in the case and is open to appeal under s. 54 of the Land Acquisition Act TRINAYANI DASSY *v* KRISHNA LAL DEY (1910) . . . **17 C. W. N. 935n.**

## LAND CESS.

*See* PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887), ART. 30.
**I. L. R. 36 Mad. 18**

## LANDHOLDER AND TENANT.

*See* LANDLORD AND TENANT.

## LANDLORD AND TENANT.


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*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S 111
**I. L. R. 35 All. 145**

### 1. ADVERSE POSSESSION.

—— *Adverse possession against landlord—Transferee of non transferable occupancy-holding in possession for over 12 years—Payment of rent by him as marfatdar—Suit for ejectment—Limitation—Limitation Act (IX of 1908), Sch I, Art 142.* Where a person recorded in the record-of-rights as a trespasser was in possession of the land in dispute for more than 12 years, but had once during that period paid rent to the landlord on behalf of the old tenant and taken a rent receipt in which he was described as a *marfatdar*: *Held*, that the suit by the landlord for *khas* possession against the trespasser after 12 years was not barred by limitation *Ishan Chandar v Ram Ranjan, 2 C L. J 125*, and *Raktoo Singh v Sudhram Ahir, 8 C. L J. 557*, referred to JADU NATH BELEL *v.* RAJ NARAIN MUKHERJEE (1912) . . . . . **17 C. W. N. 459**

## LANDLORD AND TENANT—*contd.*

### 2. EJECTMENT.

1. —— *Suit for Ejectment—Tenant's claim to hold more land than included in lease—Limitation—Onus—Limitation Act (XV of 1877), Sch II, Art 142* In a suit by the zemindars for ejectment, the defendants claimed to hold seven *puras* of land as a *mokurari chak* under a *sanad* of 1740 renewed in 1815, which purported to grant only two *puras* The defendants also pleaded limitation. The boundaries of the *mokurari chak* on three sides were specified in the *sanad* and were identifiable but the other boundary was described as an *ail*. The plaintiffs failed to prove that they or their predecessors ever had possession of any portion of the seven *puras* since the *sanad* was originally granted and they also failed to show what was the eastern boundary if it was not the *ail* pointed out by the defendants, which if accepted would make the lands seven *puras*: *Held*, that the plaintiffs having failed to prove that the lands in suit were not covered by the *sanad* and that they had been dispossessed or that their possession had been discontinued within 12 years before the suit, it was properly dismissed It lay upon the plaintiffs to prove not only title as against the defendants to the possession, but to prove that the plaintiffs had been dispossessed or had discontinued to be in possession of the lands within 12 years of the commencement of the suit DHARANI KANTA LAHIRI CHOWDHURI *v* GABAR ALI KHAN (1912)
**17 C. W. N. 389**

2. —— *Tenancy, termination of, by notice to quit—Tenancy outside Transfer of Property Act (IV of 1882)—Sufficiency of notice—Service by registered post—Proof—Endorsement of tender and refusal by postal officers, if sufficient—Permanency of tenure, question when one of law—Second Appeal.* The rule which has generally been applied to cases outside the Transfer of Property Act, in connection with the sufficiency of a notice to quit, is that the notice must be a reasonable notice The tender to and refusal by the defendant of a cover sent by registered post and containing the notice to quit was sufficiently proved by the endorsement on the cover or envelope stating the defendant's refusal to receive the document *Jogendra Chander Ghose v. Dwarka Nath Karmokar, I. L R 15 Calc 681*, followed. A finding of the lower Appellate Court that a tenure is not permanent if and when open to Second Appeal discussed DURGA NATH PARAMANICK *v.* RAJENDRA NARAIN SAHA (1913)
**17 C. W. N. 1073**

3. —— *Ejectment—Purchaser of non-transferable occupancy holding, possession for more than 12 years—Rent, payment as marfatdar—Tenant, recognition by landlord—Possession, if adverse—Limitation, if would extinguish right or create limited interest and tenancy.* A plaintiff suing in ejectment a purchaser of a non-transferable occupancy holding cannot succeed (unless he makes out a case under s. 18 of

LANDLORD AND TENANT—*contd*

2. EJECTMENT—*concld.*

the Limitation Act) where his right to possession accrued long before 12 years of the commencement of the suit Where the defendant had paid rent for more than 30 years and the rent had been received by the landlord from the defendant as *marfatdar* of the original tenant who had no transferable right, a Court would be slow to hold that a complete extinguishment of the plaintiff's right took place by adverse possession and prefer to hold that the statute of limitation created a limited interest and tenancy. The mere fact that in rent receipts the word *marfatdar* is used is not conclusive to show that there was no recognition and the Courts should determine in each case whether, on a consideration of all the facts, not merely by giving undue weight to words used, a legal inference is or is not to be drawn that there has been a recognition establishing a relationship of landlord and tenant between one who has paid and another who has received rent for a number of years PRABHABATI DASSI *v.* TAIBATUNNESSA CHOWDHURANI (1913) . . **17 C. W. N. 1088**

3. HYPOTHECATION

——————— *Tenant in possession without a patta—Suit to enforce hypothecation of property as security for rent. Held,* that a hypothecation of other property by certain tenants as security for their rent was none the less enforceable because, though the tenants had executed a *qabuliat* in respect of the land held by them, no *patta* had been executed by the landlords in their favour. *Sheo Karan Singh* v. *Maharaja Paibhu Narain Singh, I. L. R. 31 All. 276,* referred to. SRI KISHAN DAS *v.* YAKUB KHAN (1913)
**I. L. R. 35 All. 505**

4. INJUNCTION.

——————— *House in abadi —Well sunk by tenant inside his house—Mandatory injunction—Discretion of Court.* In this the High Court refused to grant a mandatory injunction at the suit of the zamindar for the removal of a well recently constructed inside their house by tenants of a house in a town, the position of the tenants being that they and their predecessors in title had paid no rent for generations, and were only liable to ejectment in the event of the site occupied by them being cleared of buildings. BHAGWAN DAS *v.* MUHAMMAD YAHIA (1913)
**I. L. R. 35 All. 292**

5. LEASE.

1. ——————— *Evidence Act (I of 1872), s. 116—Estoppel.* *A* purporting to be *dharmakarta* of a temple gave a lease of the temple properties to *B*. During the tenancy, *C* and not *A* was declared, in a separate suit, to be the rightful *dharmakarta*. *B* had not attorned to nor been evicted by *C*. *Held,* that the tenancy had not been determined and that in a suit by *A* for

LANDLORD AND TENANT—*contd.*

5. LEASE—*concld.*

rent, *B* was estopped by s. 116, Indian Evidence Act, from denying *A's* title. DEVALRAJU *v.* MAHAMED JAFFER SAHIB (1913)
**I. L. R. 36 Mad. 53**

2. ——————— *Lease until lessee requires or wishes—Tenancy at will on both sides.* A lease by which the lessees are to hold for such time as they require or wish, is a tenancy at the will of the lessee which in law is a tenancy at the will of the lessor also. Coke on Littleton, page 55 (*a*), and Halsbury's Laws of England, Vol. 18, page 434, referred to. MANICKA *v.* CHINNAPPA (1913) . **I. L. R. 36 Mad. 557**

6. RENT.

1. ——————— *Suit for rent—Denial of landlord's title—Landlord, if entitled to rent for use and occupation where no such alternative claim is made in the plaint.* In a suit for rent where no alternative claim is made for compensation for use and occupation, no rent can be decreed on that footing Where in a suit for rent the defendant denied the landlord's title and the plaintiff failed to prove an alleged settlement with him and no alternative claim was made in the plaint for compensation for use and occupation *Held,* that the landlord was not entitled to compensation for use and occupation. *Lukhee Kant Doss* v *Sumeeroodh Luskar, 13 B. L. R. 243, Surendra Narain* v *Bhai Lal, I L. R. 22 Calc 752, Rachhea Singh* v *Upendra Chandra, I L. R 27 Calc. 239,* and *Gobinda Sundar* v. *Srikrishna, 10 C. L. J. 538,* followed. *Surnomoyee* v *Dino Nath, I. L. R 9 Calc. 908,* and *Azim Sirdar* v. *Ramlal, I. L. R. 25 Calc 324,* discussed *Eshen Chandra Singh* v *Shama Charn Bhatto, 11 Moo, I A. 7, 20,* referred to. BHUKHI KOER *v.* RAM KHELWAN PERSHAD (1912) . . . . . **17 C. W. N. 311**

2. ——————— *Relation of landlord and tenant—Rent, ex parte decree for, if operates as res judicata—Notice under s 167 of the Bengal Tenancy Act (VIII of 1885) if bars suit for rent* An *ex parte* decree in a suit for rent operates as *res judicata* upon the question of relation of landlord and tenant. *Bir Chander* v *Harish Chander, I. L. R. 3 Calc. 883,* referred to. *Madhu Sudan* v. *Brae, I. L. R. 16 Calc 300,* discussed and distinguished. Where a suit was decided in the presence of the defendant's pleader: *Held,* that the decree could not be called an *ex parte* one merely because the defendant did not adduce evidence or submit any argument at the trial. *Held,* also, that the *ex parte* decree did not lose its conclusive character because it was not executed The relation of landlord and tenant being once established the mere fact of non-payment of rent is not sufficient to show that the relationship has ceased. If a landlord elects to treat the defendant as a tenant, the mere fact of his having served a notice on him under s. 167 of the Bengal Tenancy Act does not bar a suit for rent. RAJ KUMAR ROY CHOWDHURY *v.* ALIMUDDI (1912) . . **17 C. W. N. 627**

**LANDLORD AND TENANT**—*concld.*

6. RENT—*concld.*

3. ——— *Agreement to deliver agricultural produce over and above cash rent—Cess—Agreement opposed to public policy* Certain tenants holding under a registered *qabuliat* agreed therein to deliver to their landlord, over and above the sum specified as a money rent, certain agricultural produce, and further to supply the landlord with a cart and bullocks "when necessary" and in default the landlord might claim the cash value of the said dues along with rent. *Held*, on suit by the landlord to recover the cash equivalent of such dues for several years, that the covenant in question was for various reasons unenforceable *Abdul Hai* v. *Nathua, 1 All L. J. 537, Sadanand Pande* v. *Ali Jan, I. L. R. 32 All. 193*, and *Sheoambar Ahir* v *The Collector of Azamgarh, I. L. R. 34 All. 358*, referred to. SIS RAM *v.* ASGHAR ALI (1912) . . . **I. L. R. 35 All. 19**

7. TRANSFER OF HOLDING.

——— *Transfer of holding—Usufructuary Mortgage of holding, effect of—Bengal Tenancy Act (VIII of 1885), s. 25—Abandonment—Forfeiture.* An unauthorized transfer of a holding or the parting with possession of it. in whole or in part, does not *per se* work a forfeiture under the Bengal Tenancy Act. Transfer by way of usufructuary mortgage stands on the same footing as other partial transfers. *Kabil Sardar* v. *Chandra Nath Nag Chowdhry, I. L. R. 20 Calc. 590, Mathura Mandal* v. *Ganga Charan Gope, I. L. R. 33 Calc. 1219*, referred to. *Baroda Charan Dutt* v. *Hemlata Dassi, 13 C. W. N. 242*, commented on. *Rasik Lal Dutta* v. *Bidhumukhi Dasi, I. L. R. 33 Calc. 1094, Rajendra Kishore Adhikari* v. *Chandra Nath Dutt, 12 C. W. N. 878, Krishna Chandra Dutta Chowdhury* v. *Khiran Bajania, 10 C W. N. 499*, distinguished. BHUPENDRA NATH BOSE *v.* BANSI TANTI (1913) . **I. L. R. 40 Calc. 870**

**"LANDLORD'S INTEREST."**

——— *Bengal Tenancy Act (VIII of 1885). s 148, cl. (h).* By the term "Landlord's interest" in s. 148, cl (*h*) of the Bengal Tenancy Act, is meant the interest of the person entitled to receive the rent from the tenant at the date of the application for the execution of the decree. SHAMBHU NATH SINGH *v* SHEO PERSHAD SINGH (1913) . **I. L. R. 40 Calc 462**

**LAND REVENUE CODE (BOM. V OF 1879, AS AMENDED BY BOM. VI OF 1901).**

——— s. 56—*Mortgagor in possession—Failure to pay assessment—Forfeiture of land—Re-grant of land to mortgagor by Collector under new tenure—Previous incumbrances not to subsist on the land re-granted.* In 1895, the defendants Nos 1 and 2 mortgaged their lands to the plaintiff, one of the conditions of the mortgage being that the mortgagors were to remain in possession of the land, and to pay the Government assessment. Default having occurred in payment of assessment, the Collector demanded payment first from mortgagors and then from the mortgagee. The latter expressed his willingness to pay, if he was placed into possession of the land The Collector eventually forfeited the land in 1902; but shortly afterwards re-granted it to defendants Nos. 1 and 2 under s. 56 of the Bombay Land Revenue Code (Bombay Act V of 1879 as amended by Bombay Act VI of 1901) on a new tenure. The mortgagee (plaintiff) next obtained a decree on his mortgage; and in execution of it attached the land. The attachment was, however, raised by the Revenue authorities under s. 70 of the Code. The plaintiff sued for a declaration that the land was liable to be attached and sold in execution of his decree. The Court of first instance dismissed the suit on the ground that the plaint disclosed no cause of action On appeal —*Held*, that the land was, under the operation of s. 56 of the Bombay Land Revenue Code, vested in defendants Nos. 1 and 2 free from the incumbrance which had been created and from the equities theretofore existing between them and the plaintiff. VEDU SHIVLAL *v.* KALU UKHARDU (1913) . . **I. L. R. 37 Bom. 692**

**LAND REVENUE CODE, BOMBAY (BOM. V OF 1879).**

*See* REVENUE JURISDICTION ACT, BOMBAY (X OF 1876), SS. 4 (*c*), 5 AND 6. **I. L. R. 37 Bom. 542**

**LEASE.**

*See* LANDLORD AND TENANT. **I. L. R. 36 Mad. 557**

*See* MINING LEASE. **L. R. 40 I. A. 223**

*See* RES JUDICATA **I. L. R. 37 Bom. 224**

——— agreement to renew.

*See* SPECIFIC PERFORMANCE **I. L. R. 40 Calc. 565**

**LEAVE TO APPEAL TO PRIVY COUNCIL.**

*See* HIGH COURT, JURISDICTION OF. **I. L. R. 40 Calc. 955**

*See* LAND ACQUISITION ACT (I OF 1894), S. 54 . **I. L. R. 37 Bom. 506**

*See* PRACTICE . **L. R. 40 I. A. 241**

**LEGACY.**

——— depending on uncertain event—

*See* SUCCESSION ACT (X OF 1865). **I. L. R. 37 Bom 644**

**LEGAL NECESSITY.**

*See* HINDU LAW—ALIENATION. **I. L. R. 40 Calc. 721**

## LEGAL PRACTITIONERS ACT (XVIII OF 1879).

——— s 14—*Vakalatnama altered after execution, by inserting name of muktear actually engaged at the request of party's agent—Conduct, if grossly improper.* A written *vakalatnama* for the purpose of engaging certain pleaders to conduct an appeal on behalf of a prisoner was taken by his maternal uncle to the prisoner in jail where it was executed by the prisoner by affixing his mark in the presence of a jail officer and was handed over to the maternal uncle, who brought it to the petitioner, a *muktear*, and instructed him to appear in the appeal The petitioner pointed out to the uncle of the prisoner that he could not appear as his name was not mentioned in the *vakalatnama* and then at the request of the latter inserted his own and other names in it and made certain other alterations: *Held*, that although the petitioner certainly acted improperly in altering the *vakalatnama*, the alterations were not made from improper motives and his conduct was not grossly improper within the meaning of s. 14 of the Legal Practitioners Act. *In the matter of* PURNA CHANDRA CHATTERJI (1912)
**17 C. W. N. 328**

——— ss. 27, 28—*Pleader and client—Fees, agreement for payment of, not in writing and not filed in Court, if may be enforced—Pleader's lien on moneys realised on behalf of client—Quantum meruit.* An agreement by a client to pay certain amount to his pleader as fees for professional service cannot be enforced by the latter when it has not been embodied in writing signed by the client and filed in the proper Court in the manner provided by s 28 of the Legal Practitioners Act, even when the amount agreed to be paid is not in excess of that prescribed under the rules framed under s. 27 of the Act for payment by any party to his opponent in respect of the fees of the pleader employed by his adversary. The language of s. 28 is comprehensive enough to include every agreement between a pleader and his client for the payment of fees for professional service, and cannot be restricted by reference to s. 27 which does not apply to such agreements. *Quære:* Whether, in the absence of a written agreement, a pleader can claim reasonable compensation for his services. KAMINI DEBI *v.* KHETRA MOHAN GANGULY (1911)
**17 C. W. N. 45**

## LEGISLATION, ULTRA VIRES.

*See* JURISDICTION OF CIVIL COURT.
**I. L. R. 40 Calc. 391**

## LEGITIMATE PURPOSE.

*See* MORTGAGE
**I. L. R. 40 Calc. 342**

## LESSEE.

——— interests of—

*See* LIMITATION ACT (IX OF 1908) SCH. I, ARTS. 91 AND 120.
**I. L. R. 35 All. 149**

## LETTERS OF ADMINISTRATION.

1. ——— *Revocation—Probate and Administration Act (V of 1881), s. 50, Expl. (4)—"Just cause"—"Useless or inoperative," meaning of—Disagreement between administrators, whether a just cause for annulling letters of administration.* A mere disagreement between administrators is not a "just cause" for annulling the letters of administration under s. 50, expl. (*4*) of the Probate and Administration Act. The words "becomes useless and inoperative" in s. 50, expl. (*4*) of the Probate and Administration Act, imply the discovery of something which, if known at the date of the grant, would have been a ground for refusing it, *e g.*, the discovery of a later will or codicil, or subsequent discovery that the will was forged, or that the alleged testator is still living. *Bal Gangadhar Tilak* v. *Sakwarbai, I L R. 26 Bom. 792*, and *Annoda Prasad Chatterjee* v. *Kalikrishna Chatterjee, I. L. R. 24 Calc. 95*, followed. GOUR CHANDRA DAS *v.* SARAT SUNDARI DASSI (1912) . . **I. L. R. 40 Calc. 50**

2. ——— *Practice—Colonial Probates Act (55 & 56 Vict, c. 6)—Power-of-attorney construction of.* The Colonial Probates Act and the procedure therein indicated, *viz.*, to send an exemplification of the probate granted in any part of the United Kingdom to be re-sealed by the Court to which it is sent, has not been extended to British India, where the practice is to require administration with will annexed to the estate of deceased British subject leaving property there Authority in a power-of-attorney granted by the executrix of a will which has been confirmed in Scotland "to produce to the Supreme Court in India in the probate jurisdiction at Calcutta or elsewhere in India the said confirmation and to procure the same to be sealed with the seal of the Supreme Court in India in accordance with the laws thereof" does not authorise the donee to obtain grant of Letters of Administration. *In the goods of* WILLIAM RENNIE (1912)
**I. L. R. 40 Calc. 74**

## LETTERS PATENT, 1865.

——— cl. 12—

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), s. 11 . **I. L. R. 37 Bom. 563**

*See* JURISDICTION.
**I. L. R. 40 Calc. 308**

——— *Leave asked for, granted by Registrar, but not ratified by Court—Leave, if may be endorsed as if granted on the date of presentation of plaint—Waiver of objection by defendant—Costs of unnecessary application.* Where leave under cl 12 of the Letters Patent as prayed for in the plaint was granted by the Registrar, subject to its ratification by Court, but it did not appear that the plaint was ever placed before a Judge: *Held*, on the matter being brought before the Judge on a later date after defendants had filed written statement and taken several other steps towards the trial and had entered on the cross-

**LETTERS PATENT, 1865**—*concld.*

examination of the plaintiff who was being examined on commission, that the granting of leave was a judicial act performable only by the Judge and leave could not now be endorsed on the plaint as given on the date on which the plaint was presented before the Registrar. *Lalitessur Sing* v. *Ramessur Sing, I. L. R. 34 Calc. 619, 627, 11 C. W. N. 649,* followed. That by the steps they had taken in the suit, defendants had waived objection as to want of leave. *A J King* v *Secretary of State for India, I. L. R. 35 Calc. 394; 12 C. W. N. 705.* The application being thus unnecessary, plaintiff was ordered to pay defendants' costs. SARASWATI DASSEE *v.* BIRAJ MOHINI DASSEE (1913) . . . **17 C. W. N. 512**

———— cl. 15—*Dissentient judgments at the hearing of appeal under—Further appeal under cl 15, if lies.* Where in an appeal under cl. 15 of the Letters Patent from the decision of a single judge, the judges having differed in opinion, the opinion of the Senior Judge prevailed under s. 36 of the Letters Patent: *Held,* that a further appeal lay under cl. 15 of the Letters Patent *Barlow* v. *Cochrane, 2 B. L R. (Or. C. J.) 56, 115,* and *Jiwan Ram* v. *Tondi Singh, I. L. R. 34 All. 13,* referred to. JADUNATH DANDUPAT *v* HARI KAR (1913) . . . **17 C. W. N. 308**

———— cl. 36—

*See* HIGH COURT, JURISDICTION OF. **I. L. R. 40 Calc. 955**

———— cl. 39—

*See* APPEAL TO PRIVY COUNCIL. **I. L. R. 40 Calc. 685**

———— cl. 140—

*See* LAND ACQUISITION ACT (I OF 1894), S. 54 . . **I. L. R. 37 Bom. 506**

**LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT.**

———— s. 12—*Ordinary original civil jurisdiction of the Bombay High Court—Suits for land and other immoveable property—Title-deeds—Suit to compel the delivery of title-deeds to land outside the ordinary original jurisdiction of the Bombay High Court.* In a suit to enforce, *inter alia,* the delivery to the plaintiff of the title-deeds of certain immoveable property situated outside the ordinary original civil jurisdiction of the Bombay High Court, where it appeared on the pleadings that the substantial point to be decided in the suit was the title of the plaintiff to the property to which the title-deeds related. *Held,* that the suit, in so far as it related to such title-deeds, was a suit for land or other immoveable property and that the Bombay High Court had no jurisdiction to entertain the same. ZULEKABAI *v* EBRAHIM HAJI VYEDINA (1913) . **I. L. R. 37 Bom 494**

**LIBEL.**

———— *Defamatory words spoken by a party in the course of a judicial proceeding, if absolutely privileged—S 499, Penal Code, exceptions 7 and 9, effect of—Distinction between civil and criminal cases for defamation— English law rule of absolute privilege, if to be followed—Distinction between witnesses and parties to a judicial proceeding.* As to the application of the rule of absolute privilege in English law to words spoken by a party in the ordinary course of any proceeding before any Court or tribunal recognised by law: *Held, per* MOOKERJEE, *J*—The language of exceptions 7 and 9 to s 499, Penal Code, does not import such absolute immunity as is recognised by English law, but in civil suits for damages for defamation the Court is not fettered by any statutory provisions, and the principle recognised in England that neither party, witness, counsel, jury nor Judge can be put to answer civilly or criminally for words spoken in office should not be dissented from. *Per* BEACHCROFT, *J.*—Witnesses and parties stand on a different footing and a party making a defamatory statement in the course of a judicial proceeding does not enjoy the absolute privilege of immunity from prosecution accorded by the English law. CROWDY *v.* L. O. REILLY (1912) . . **17 C. W. N. 554**

**LICENSE.**

*See* ABKARI ACT (BOM. ACT V OF 1878), SS. 16, 43 . **I. L. R. 37 Bom. 320**

*See* ABKARI ACT (BOM. ACT V OF 1878), SS 32, 67 . **I. L. R. 37 Bom. 101**

*See* ARMS ACT (XI OF 1878), SS. 13, 19 (*e*) . . **I. L. R. 37 Bom. 181**

**LICENSEE.**

———— liability of—

*See* PETROLEUM. **I. L. R. 40 Calc. 356**

**LICENSOR AND LICENSEE.**

*See* TRADE-MARK. **I. L. R. 40 Calc. 814**

**LIEUTENANT-GOVERNOR.**

———— power of, to pass Act—

*See* JURISDICTION OF CIVIL COURT **I. L. R. 40 Calc. 391**

**LIFE ASSURANCE COMPANIES ACT (VI OF 1912).**

*See* TRADE-MARK. **I. L. R. 40 Calc. 570**

**LIFE ESTATE.**

*See* WAKF . **I. L. R. 37 Bom. 447**

**LIFE INSURANCE.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 . **I. L. R. 37 Bom. 471**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900), S. 130 . **I. L. R. 37 Bom. 198**

## LIGHT AND AIR.

——————— *Damages for infringement of light and air—Injunction, when to be granted.* A mandatory injunction will be granted to remove an obstruction of an easement to light and air where the character of the obstruction is such that its consequence is to darken the plaintiff's house so as to make it uncomfortable and in part useless. In such a case damages would not be an adequate remedy. MUTHU KRISHNA AYYAR *v.* SOMALINGA MUNINAGANDRIEN (1913) **I. L. R. 36 Mad. 11**

## LIMITATION.

*See* ABKARI ACT (BOM. ACT V OF 1878), SS. 32, 67 . **I. L. R. 37 Bom. 101**

*See* ACCOUNT, SUIT FOR **I. L. R. 40 Calc. 108**

*See* ADMINISTRATION **L. R. 40 I. A. 236**

*See* CIVIL PROCEDURE CODE, 1882, S. 315 **I. L. R. 35 All. 419**

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, RR. 84, 89, 92 **I. L. R. 35 All. 65**

*See* COMPANIES ACT (VI OF 1882), S. 169. **I. L. R. 35 All. 177**

*See* EXECUTION OF DECREE. **I. L. R. 35 All. 178**

*See* GUJARAT TALUKDARS' ACT (BOM ACT VI OF 1888), S 31 **I. L. R. 37 Bom. 380**

*See* HINDU LAW—ALIENATION. **I. L. R. 40 Calc. 966**

*See* HUSBAND AND WIFE **I. L. R. 37 Bom. 393**

*See* LIMITATION ACT (XV OF 1877), S. 19 AND SCH. II, ART 148. **I. L. R. 35 All. 227**

*See* LIMITATION ACTS.

*See* LIMITATION ACT (IX OF 1908), SCH. I, ARTS 91 AND 120.

*See* NORTH WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883), S. 10 . **I. L. R. 35 All. 308**

*See* PRELIMINARY DECREE **I. L. R. 37 Bom. 60**

*See* PROVINCIAL INSOLVENCY ACT (III OF 1907), SS. 22, 46 AND 52. **I. L. R. 35 All. 410**

*See* SANCTION FOR PROSECUTION. **I. L. R. 40 Calc. 239, 584**

*See* TRANSFER . **I. L. R. 40 Calc. 259**

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901), S. 121. **I. L. R. 35 All. 541**

*See* VATAN . . **I. L. R. 37 Bom. 81**

1. ——————— *Suit by an auction-purchaser to recover the purchase-money from a person who attached money, in deposit in Court, as representing the surplus sale-proceeds belonging to the judgment-debtor—Limitation Act (XV of 1877), Sch. II, Art. 120* Limitation applicable to a suit brought by an auction-purchaser to recover a certain sum of money from one who had, after the sale and the deposit of money in Court, attached that sum in execution of his decree against the judgment-debtor, as representing the surplus sale-proceeds belonging to the original judgment-debtor after satisfaction of the decree obtained against the debtor by the decree-holder, is that provided by Art 120, Sch. II, of the Limitation Act (XV of 1877) *Nilkanta v. Imam Sahib, I. L. R 16 Mad 361*, relied on *Hanumam Kamat v. Hanuman Mandur, I. L. R. 19 Calc. 123*, and *Ram Kumar Shaha v. Ram Gour Shaha, I. L. R. 37 Calc. 67*, distinguished. AMRITA LAL BAGCHI *v.* JOGENDRA LAL CHOWDHURY (1912) **I. L. R. 40 Calc. 187**

2. ——————— *Limitation Act (IX of 1908), Sch I, Arts. 19 and 23—Conspiracy to maliciously prosecute, suit for—Conspiracy as a cause of action—Evidence Act (I of 1872) ss. 3, 114 ill. (g), 125—Standard of proof—Claim of privilege, whether adverse inference can be drawn from—Disclosure of source of information by privileged person, duty of Court regarding—Presumption as to possession of article found in common room of joint family dwelling house—Arrest and Search—Professional conduct of counsel—Counsel making charges of misconduct, powers of Court regarding—Counsel's instructions, no privilege as against Court—Professional Etiquette affecting counsel—Bar Council, resolutions of—Counsel accepting retainer when likely to be witness—Counsel engaged in case, propriety of appearing as witness—Adverse inference where counsel not called as witness—Inspection by counsel of book produced by witness during cross-examination—Reference to medical works by Court, without knowledge of parties—Tort. Per* WOODROFFE AND COXE, *JJ.* On the question of the standard of proof: there is but one rule of evidence which in India applies to both civil and criminal trials, and that is contained in the definition of "proved" and "disproved" in s. 3 of the Evidence Act. The test in each case is, would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which, coming from itself, dictates a conscientious and prudent exercise of its judgment There is a presumption against crime and misconduct, and the more heinous and improbable a crime is, the greater is the force of the evidence required to overcome such presumption The English rule in these mattes does not, as such, apply in India. *Jarat Kumari Dassi v Bissessur Dutt, I. L. R. 39 Calc 245*, explained. Where a document is privileged from production, no adverse inference can be drawn from its non-production. This rule applies as regards the party claiming privilege, and *a fortiori* it applies where the privilege is claim-

**LIMITATION**—*contd.*

ed by a third party. Although s. 125 of the Evidence Act does not in express terms prohibit a witness, if he be willing, from saying whence he got his information, the protection afforded by that section does not depend upon a claim of privilege being made, but it is the duty of the Court, apart from objection taken, to exclude such evidence. *A fortiori*, where privilege is claimed, no adverse inference can be drawn therefrom. Where articles are found in a part of a house to which several persons living in the house have access, such as a *bortakhana*, there is no presumption that they are in the possession or control of any person other than the *karta* or head of the house. *Queen Empress* v *Sangam Lall, I L. R. 15 All. 129*, approved. *Semble* It is immaterial, in an action for malicious arrest, under what section of an Act an arrest is made, if in fact the circumstances are such that the Act justified arrest; and a person making a search is entitled to call in aid any statute which justifies his action, quite irrespective of whether it was present or not to his mind when he made the search. The Court is entitled to ask counsel who, during the conduct of a case makes charges of misconduct, whether he makes the charges on instructions, and, if so, on whose. It is not sufficient to plead instructions. Counsel have a responsibility in the matter, and are not justified in making serious charges of fraud and crime unless they are personally satisfied that there are reasonable grounds for putting them forward. Instructions to counsel are only privileged in the sense of being protected from disclosure to the opponent. There is no privilege as against the Court. The latter cannot use them as evidence in the case, and for the purpose of the trial would have to treat them as confidential, but they could be called for then and there and be used after the trial for determining whether disciplinary action should be taken against counsel by the Full Court. Whenever a Court relies on a book of reference, such as a work on medical jurisprudence, it should be made known at the trial to the parties, so that they may have an opportunity of adducing evidence or argument on the point. *Durga Prosad Singh* v. *Ram Doyal Chaudhury, I. L. R. 38 Calc 153*, referred to. The following resolutions of the Bar Council approved:—"(*a*) If counsel knows, or has reason to believe that he will be an important witness in a case, he ought not to accept a retainer therein. (*b*) If he accepts a retainer not knowing or having reason to believe that he will be such a witness, but at the opening or at any subsequent stage before evidence is concluded it becomes apparent that he is a witness on a material question of fact, he ought not to continue to appear in the case unless he cannot retire without jeopardising the interests of his client. (*c*) If counsel knows or has reason to believe that his own professional conduct on matters out of which the action arises is likely to be impugned in the case, he ought not to accept a retainer. (*d*) If he accepts a retainer not knowing or having reason to believe that his own professional conduct in such matters is likely to be impugned, but finds in the course of the case that it is so impugned, he ought to adopt the same course of conduct as is mentioned in clause (*b*) *ante*. (*e*) In either of the cases mentioned in clauses (*b*) and (*d*), there is no rule of professional ethics which debars counsel, if he continues to act as counsel in the case, from going into the witness box and being cross-examined." Although the resolutions of the Bar Council are not binding on the Courts, the Bar Council is the recognised authority on matters of professional conduct and etiquette affecting counsel, and its opinion is of the greatest weight and value. There is nothing necessarily unprofessional in counsel giving evidence in a case in which he appears as such. *Sethna* v. *Mirza Mahomed Shirazi, 9 Bom. L. R. 1044, Cobbett* v. *Hudson, 1 E. & B. 11, Stones* v. *Byron, 4 Dowl. & L. 393, Deane* v *Packwood, 4 Dowl. & L. 395n, Corea* v. *Peiris, [1909] A. C. 549, 14 C. W. N. 86, Nundo Lal Bose* v. *Nistarini Dassi, I. L. R. 27 Calc. 428*, referred to. *Curry* v. *Walter, 1 Esp. 456*, distinguished. As a general practice, however, it is undesirable when the matter to which counsel depose is other than formal, that they should testify either for or against the party whose case they are conducting. Under s. 118 of the Evidence Act, counsel, although they may be engaged in the case, are competent to testify whether the facts in respect of which they give their evidence occur before or after their retainer. *Cobbett* v. *Hudson, 1 E & B. 11*, referred to. The rule laid down in s. 114 ill. (*g*) of the Evidence Act that the Court may presume that evidence which could be and is not produced would, if produced, be unfavourable to the party who withholds it, was held to apply to the case of counsel engaged in a suit who should not have been, under the circumstances, counsel but should have been called as a witness. It is unprofessional for counsel to cross-examine a witness as to facts within his personal knowledge. *In the matter of certain Counsel*, 4th August, 1908 (unreported), approved. Where counsel during the hearing of a case calls for the production of a book, which is produced and handed to him by his opponent with certain pages marked as those only to which he may refer in respect of the subject-matter of his cross-examination, it is improper for counsel who calls for the book to inspect any of the other pages. If a suit on a tort is barred as against one person, the period of limitation cannot be extended because it happens to be against three persons who are alleged to have committed the tort in conspiracy. The same set of facts cannot constitute separate causes of action, both for a tort, and for a conspiracy to cause damage. Where there is a joint tort, the proper action is on the tort against the joint tort-feasors, and not on a cause of action to recover special damage by reason of a conspiracy to cause damage. A suit for damages for false imprisonment or malicious prosecution against joint tort-feasors, is governed by the one-year rule under Arts 19 and 23 of the Limitation Act. There are instances in which two or more persons can

LIMITATION—*contd.*

render themselves liable to civil proceedings by combining to injure the plaintiff, although, if one of them did the same act by himself and without any preconcert with others, he would escape liability. An action on such a conspiracy would lie in this country. In an action on conspiracy special damage must be proved. *Per* CHATTERJEE, *J.* There is no authority for holding that a tort, when committed by several persons acting in concert, is different from the same tort committed by a single individual. The combination in such cases may be an element of aggravation in the assessment of damages, but does not suffice to make it a different tort. *Quinn* v. *Leathem*, [*1901*] *A. C. 495*, referred to. Conspiracy or wrongful combination is not a material element in the constitution of a wrong. *Giblan* v *National Amalgamated Labourer's Union*, [*1903*] *2 K B. 600*, referred to. WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912) . **I. L. R. 40 Calc. 898**

3. ——— *Land assigned to support religious service—Alienation by holder—Lease—Adverse possession.* In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Makan and religious community by successive holders, time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant, but from the date when the claims of the parties became openly and undoubtedly adverse. *Tekait Ram Chunder Singh* v. *Srimati Madho Kumari*, *L. R. 12 I. A. 197*, and *Trimbak Ramchandra* v. *Shekh Gulam Zilani*, *I. L. R. 34 Bom. 329*, referred to. MAHAMADGAUS *v.* RAJABAKSHA (1912) . . **I. L. R. 37 Bom. 224**

4. ——— *Adverse possession—Title—Bombay Regulation V of 1827, s 1—Rule of positive law—Limitation Act (XIV of 1859), s. 2—Limitation Act (IX of 1871), s. 2—Repeal of s. 1 of Bombay Regulation V of 1827—Effect of repeal—Construction of statute—Rule of positive law not affected by law of limitation—Endowment of village for the purpose of performing Karpur Mangalarti—Trustee—Alienation by trustee—Adverse possession by alienee.* In 1678 a village was given in *inam* to the then *Swami* of the Uttaradhi Math for the purpose of meeting the expenses of a religious service called the *Karpur Mangalarti* at the temple of the Math. A successor of the *Suami* gave away the village in gift (*i.e.* as *Krishnarpana*) to the defendants' predecessor-in-title who went into possession as proprietors. At first they paid *judi* on the land at the rate of Rs. 20 per year; but after 1840 this payment was stopped. The defendants continued to hold the village as before. In 1911, the present *Swami* of the math sued to obtain a declaration that the village belonged to him and to recover its possession from the defendants. The plea of the defendants was that the suit was barred by limitation. *Held*, that inasmuch as the original grant vested the legal property in the *Swami* and the equitable estate in the juridical person, the idol, the original grantee took as a trustee and his successors held by the same title. *Hardoon* v. *Belilios*, [*1901*] *A. C. 118, 121*, followed. *Held*, further, that since the defendants went into possession of the village in 1830, their title ripened in 1860 into ownership under the provisions of s. 1 of the Bombay Regulation V of 1827. *Held*, also, that the operation of s. 1 of the Bombay Regulation V of 1827 was not affected by the enactment of s 2 of the Limitation Act (XIV of 1859), *first*, because the Act did not come into force till the 1st January 1862; and, *secondly*, because it being a statute of limitation did not affect s. 1 of the Bombay Regulation V of 1827, which was an enactment of positive prescription. *Sitaram Vasudev* v. *Khanderav Balkrishna*, *I. L. R. 1 Bom. 286*, and *Rambhat Agnihotri* v. *The Collector of Puna*, *I. L. R. 1 Bom. 592*, followed. Where a later Act of Legislature does not purport or affect to supersede an earlier Act, the Court will endeavour to read the two enactments together and to avoid conflict if possible. RANGACHARYA *v.* DASACHARYA (1912) **I. L. R. 37 Bom. 231**

5. ——— *Suit for redemption of mortgage made in 1793—Act XIV of 1859 s 1, cl. 15, and s 4—Act IX of 1871, s. 20, and Sch II, Art 148—Act XV of 1877, s. 19, and Sch II, Art. 148—Acknowledgment of title—Receipt by mortgagees—Interest after date of suit—Damdupat—Discretion as to award or not of interest—Assumed exercise of discretion not interfered with* A suit was brought, by the predecessors-in-title of the respondents, for redemption of a mortgage, dated 4th November 1793, in favour of the predecessors-in-title of the appellants. The deed mortgaged with possession a certain *desaigiri dastur* and certain *pasaeta* lands situate in the district of Broach, and after that district finally came under British rule the *desaigiri dastur* was commuted into a fixed money allowance payable from the treasury since which settlement the appellants had received that allowance in lieu of the *desaigiri dastur*. The defence was that the suit was barred by the Indian Statutes of Limitation which provide a period of sixty years for redemption, and that more than that time had elapsed since the date of the mortgage. The respondents, however, put in evidence documents signed by the mortgagees by which they contended the period of limitation had been extended. *Held* (affirming the decision of the High Court), that an entry in a receipt book relating to the payment on 8th June 1843 of the fixed allowance from the treasury in respect of the year ending 1st May 1843, was an acknowledgment under the Indian Acts of Limitation (XIV of 1859, s. 1, cl. 15, Act IX of 1871, s. 20, and Act XV of 1877, s. 19) made within the period of limitation, and sufficient to prevent the suit from being barred. The rights of the mortgagees were then vested in somewhat unequal shares in two persons named in the receipt, whose names had in the ordinary course been entered in the Collector's books as mortgagees under the mort-

**LIMITATION**—*contd.*

gage in suit, as being entitled to the payment of the annual allowance into which the original rights had been commuted. The entry in the book of the Government agent entrusted with the payment stated that it was made to the two persons named. The amounts of the shares of each of them was set against their names, and against those shares the mortgagees had written their respective names in acknowledgment of the receipt of their shares. This acknowledgment created a new period of limitation from 8th June 1843, and consequently the suit was not barred. The appellants claimed to be allowed interest on the redemption money for the period between the date of suit and the actual date of redemption. Admittedly the rule of *dàmdupat* applied, and therefore the amount of arrears of interest to be allowed was limited to an amount equal to the capital sum. The District Judge gave no interest from the date of suit. There was nothing to show that he had done so by an oversight or mistake. The High Court treated the matter as if the District Judge had exercised his discretion and had declined to give interest, and they thought that it had not been an unreasonable exercise of his discretion. No application was ever made to the District Judge to amend his alleged omission to give interest, and their Lordships agreed with the High Court decision and the grounds on which it rested. HIRALAL ICHHALAL *v.* NARSILAL CHATURBHUJDAS (1913) . . **I. L. R. 37 Bom. 326**

6. ——— *Suit filed after limitation in wrong Court—Return for presentation to proper Court—Bar of limitation in spite of Limitation Act (XV of 1877), s. 14.* If a plaint is returned for presentation to the proper Court on the ground of absence of jurisdiction in the Court to which it was originally presented, the suit when presented to the new Court is a new suit, and cannot be regarded as a continuation of the infructuous suit in the wrong Court. This is the basis of s. 14 of the Limitation Act (XV of 1877). Hence if the suit when originally filed in the wrong Court would have been ordinarily barred by limitation as by being barred during the holidays of that Court, after which alone it was filed, the suit when filed in the new Court must be held to be barred in spite of s 14 of the Limitation Act. *Mohidin Rowthen* v. *Nallaperumal Pillai, 21 Mad. L. J. 1000,* followed. *Takuroodeen Mahomed Eshan Chowdry* v. *Kurimbox Chowdry, 3 W. R. Cr. 20, Khelat Chandar Ghose* v. *Nuseebunnissa Bibee, 16 W. R. Cr. 47,* and *Assan* v. *Pathumma, I. L. R. 22 Mad. 494,* distinguished. SESHAGIRI ROW *v.* VAJRA VELAYUDAM PILLAI (1913) **I. L. R. 36 Mad. 482**

7 ——— *Statute of, if affects procedure only—Amending statute when affects rights—Effect on causes of action previously accrued—Bengal Tenancy Act (VIII of 1885), s. 184, Sch. III, Art. 3—Eastern Bengal and Assam Tenancy Amendment Act (E. B and Assam I of 1908), s. 61, cl. (3)—Under-raiyat, dispossessed by landlord before amending Act, suit to recover brought after—Limitation—Statute, construction of—Presumption against retrospective operation, where amendment of procedure affects rights—Postponement of operation of statute, effect of—Procedure, statutes of, retrospective operation of.* The presumption against a retrospective construction of a statute has no application to enactments which affect only the practice and procedure of Courts even where the alteration which the statute makes has been disadvantageous to one of the parties. *Per* MOOKERJEE, *J.* agreeing with N. R. CHATTERJEA, *J.* (CARNDUFF, *J contra*)—The statement that a statute of limitation embodies merely a rule of procedure is only generally and not universally true Where, if a statute of limitation is taken to effect pre-existing causes of action, the effect is to absolutely bar all actions where the cause of action had accrued more than the limited time before the statute was passed, the statute ceases to be one of mere procedure and operates to the destruction of existing and enforcible rights. In such cases the presumption against a retrospective construction of the statute becomes applicable, unless the coming into operation of the statute has been postponed so as to allow reasonable time for enforcement of existing causes of action. No suitor has a vested interest in the course of procedure or a right to complain, if during the litigation the procedure is changed, provided no injustice is done. S. 61, cl (*3*) of the Eastern Bengal and Assam Tenancy Amendment Act of 1908 which provides a two years' period of limitation for suits by *raiyats* and under-*raiyats* for recovery of possession (when dispossessed by or through the agency of the landlord), has no retrospective operation on suits by under-*raiyats* or non-occupancy *raiyats* in which the cause of action arose before the passing of the Act. MANJHOORI BIBI *v.* AKEL MAHUMED (1913) **17 C. W. N. 889**

**LIMITATION—***concld.*

**LIMITATION ACT (IX OF 1871).**

——— **s. 21**—*Act No. IX of 1908, s. 31—Limitation—Mortgage with possession—Realisation of rents and profits equivalent to receipt of interest as such under the terms of the mortgage.* Under the terms of a mortgage-deed executed in 1850 the mortgagee was to take possession of the mortgaged property and appropriate the rents and profits in lieu of interest. The mortgagee remained in possession up to 1889 when he was dispossessed. In 1910 he brought a suit for sale. *Held,* that the realization of rents and profits in lieu of interest was equivalent to the receipt of interest as such under the terms of the mortgage and therefore under s. 21 of Act IX of 1871 the mortgagee was entitled to compute limitation from the year 1889. Act XV of 1877 having by that time come into operation, the plaintiff was in 1910 entitled to bring his suit within the limitation provided by s. 31 of Act IX of 1908. INDARJIT *v.* GAJADHAR SAHAI (1913) . . . **I. L. R. 35 All. 270**

## LIMITATION ACT (XV OF 1877).

——— s. 9.

*See* LIMITATION ACT (XV OF 1877), S. 19 AND SCH. II, ART 148.
**I. L. R. 35 All. 227**

——— s. 14—

*See* LIMITATION. **I. L. R. 36 Mad. 482**

——— *Plaint returned for presentation in proper Court—Power of Court to fix a period of time for such presentation—Exclusion of time.* For the purposes of determining limitation as governed by the provisions of s. 14 of Act XV of 1877, the date of instituting the suit must be held to be the date on which the plaint was filed in the Court having jurisdiction to try it, excluding only, for the purpose of calculating limitation, the period excluded under s. 14. Where a plaint which had been presented on the last day of the period of limitation, was subsequently returned by the Court for presentation within a week in the proper Court and was so presented five days later: *Held*, that the suit when so presented was barred by limitation as only the period during which the suit was pending in the Court without jurisdiction would be excluded under s. 14 of the Limitation Act. HARI DAS RAY *v.* SARAT CHANDAR DEY (1913)
**17 C. W. N. 515**

——— s. 19, Sch. II, Art. 148—*Acknowledgment, effect of—Acknowledgment by widow in possession of husband's estate—Suspension of limitation—Act XV of 1877, s. 9—Act XIV of 1859, s. 1, cl. 15—Res judicata—Contentions raised for the first time on appeal to His Majesty in Council—Practice of Privy Council.* In a suit brought by the appellant on the 4th of March, 1907, against the respondents for the redemption of a mortgage, dated the 2nd of January, 1842, made between the respective predecessors in title of the parties and in which no date for redemption was specified, acknowledgments of the mortgagor's right had been made by the widow and daughter of a former mortgagee, a predecessor in title of the respondents, which, the appellant contended, extended the period of limitation. *Held*, that the law of limitation applicable to the case was not Act XIV of 1859, the law in force at the date of the acknowledgments, but Act XV of 1877, which was in force at the time of the institution of the suit. Under Art. 148 of Sch II to that Act the period of limitation prescribed for a suit to redeem a mortgage was 60 years from the time when the right to redeem accrued, and by s. 19 an acknowledgment to be effective must be "signed by the party against whom such right is claimed or by some person through whom he claims title." *Held*, that the respondents derived title through the last male owner, and not through his widow and daughter, who were therefore not competent under s. 19 to make an acknowledgment of the right of redemption so as to bind any interests except their own. To hold otherwise would be to extend the power of a Hindu female in possession of a limited interest to bind the estate to an extent which was not sanctioned by authority. An acknowledgment of liability only extends the period of limitation within which the suit must be brought, and does not confer title, and, with reference to s. 2 of Act XV of 1877, was not a "thing done" within the meaning of s. 6 of the General Clauses Consolidation Act (I of 1868). There was nothing in Art. 148 of Sch. II of Act XV of 1877 to justify a holding that by reason of the fusion of the interests of the mortgagor and mortgagee (which, it was alleged, took place between the years 1883 and 1898) the period of limitation, which began to run on the 3rd of January, 1842, was suspended, which would be deciding contrary to s. 9 of the Act: this suit not being one to which the proviso to that section applied. *Burrell* v. *Earl of Egremont, 7 Beav. 205*, distinguished. The present suit was not barred as *res judicata* by a former suit in 1904. With regard to contentions raised on this appeal which had not been raised before at any stage of the case, and consequently had not been considered by any of the Courts below, nor were even suggested in the reasons in the case of the appellant to England, their Lordships adhered to the established practice of the Board not to allow new cases to be made for the first time on appeal to His Majesty in Council. SONI RAM *v.* KANHAIYA LAL (1913)
**I. L. R. 35 All. 227**

## LIMITATION ACT (XV OF 1877)—*contd.*

——— s. 19, Sch. II, Art. 148—*concld.*

——— Sch II, Art. 35—

*See* HUSBAND AND WIFE.
**I. L. R. 37 Bom. 393**

——— Sch. II, Arts. 44, 91—

*See* EXECUTOR, SALE BY.
**I. L. R. 36 Mad. 575**

——— Sch. II, Arts. 48, 49—*Illegal distraint and consequent removal and misappropriation of crops—Suit for damages.* Where in execution of an illegal distraint, the defendant cut the crop standing on plaintiff's land and removed the same: *Held*, that a suit by the plaintiff for damages in respect of these acts was a suit in respect of "specific moveable property" within one or other of the two Arts. 48 and 49 of Sch. II of Act XV of 1877. *Hari Charan* v. *Hari Kar, 9 C. W. N. 367, I. L. R. 32 Calc. 459*, distinguished. *Sripati Sarkar* v. *Hari Kar, 12 C. W. N. 1090*, reversed. JADU NATH DANDUPAT *v.* HARI KAR (1913)
**17 C. W. N. 308**

——— Sch. II, Art. 106—*Suit for partnership account—Presumption of dissolution of partnership from facts of case—Cessation of annual accounts rendered yearly for many years and rendering of final account showing division of capital and revenue.* The question in this appeal which arose out of a suit brought in 1902 for a partnership account and to recover the plaintiff's share in the properties of a business carried on by them and the defendants, was whether the suit was barred by limitation, the defendants contending that there had been a dissolution of the

**LIMITATION ACT (XV OF 1877)**—*contd.*

**Sch. II, Art. 106**—*concld.*

partnership in 1891 which the plaintiffs denied: *Held* (affirming the decision of the High Court), that when annual accounts of the partnership business which had been rendered year by year from 1868 to 1891, ceased in the latter year and, on 12th April 1891, a final account showing the division of both capital and revenue was made out, the defendants afterwards carrying on the business without any interference from the plaintiffs, the presumption was in favour of the dissolution of the partnership as at the definite date of the year when the account was thus closed. And their Lordships were of opinion that these facts taken with the other acts and conduct of the parties, and the whole circumstances of the case which greatly strengthened the presumption made the inference in favour of the dissolution having occurred at the above date substantially conclusive. The suit, therefore, not having been brought within three years from that date was barred by Art. 106 of Sch. II of the Limitation Act (XV of 1877). JOOPOODY SABAYYA *v.* LAKSHMANASWAMY (1913) . **I. L. R. 36 Mad. [P.C.] 185**

**Sch. II, Art 120—**

*See* AUCTION-PURCHASER, SUIT BY.
**I. L. R. 40 Calc. 187**

*Attachment of wrong man's property—No suit filed—Subsequent sale of property under attachment—Fresh cause of action from date of sale—Art. 120 applicable—Absence of suit questioning attachment, no bar to subsequent suit on sale.* Though attachment of a person's land as if it belonged to another, gives the owner a cause of action, on which he could have brought a suit, but did not, yet the sale of the same at a later date is a fresh and greater invasion of his right and gives him a fresh cause of action on which he could sue within six years from the date of sale under Art. 120 of the Limitation Act. Though he might have sued after the attachment he was not bound to sue The sale though held in pursuance of the attachment was not a necessary consequence of it. *Robert Skinner* v. *Shanker Lal, I. L. R. 31 All 10 (note)*, followed. *Per* CURIAM. The attachment gives the judgment-creditor certain rights in execution, but the title to the property continues in the owner notwithstanding the attachment, and it so continues even if the owner's objection to the attachment be disallowed. *Narasimha Rau* v. *Gangaram, 18 Mad. L. J. 590*, referred to. ANANTHARAZU *v.* NARAYANARAZU (1913) . . . . **I. L. R. 36 Mad. 383**

**Sch. II, Art. 127**—*Joint property—Exclusion of a co-parcener—Knowledge of exclusion—Decree by another excluded co-parcener for share by partition does not prevent time from running.* Certain joint family property was in the possession of some of the co-parceners (defendants Nos. 1 to 3), who began to hold it adversely to the remaining co-parceners from 1890. In 1895, defendant No. 5, one of the excluded co-parceners, sued all the co-parceners to recover his share in the property by partition. His share, which was one-sixth in the property, was decreed to him in 1898, and he recovered possession of it in due course. In 1907, another of the excluded co-parceners brought a suit to recover his share by partition of the property. He sought to bring his suit within time by alleging that the possession of defendants Nos. 1 to 3 became adverse only after 1898. The lower Courts held that the plaintiff was excluded to his knowledge from enjoyment of the property from 1890, and that his suit was barred under Art. 127 of Sch. II of the Limitation Act. On appeal:—*Held*, by CHANDAVARKAR, *J.*, that the decree of 1898 gave a sixth share to defendant No. 5, and left the remaining five-sixths untouched; the mutual relations of the defendants in the first suit with reference to their five-sixths having been left to continue as before, the property in their hands remained joint, and that the judgment and decree of 1898 did not disturb as between them the previous state of things and stop the limitation that had begun to run as against the plaintiff from 1890. *Held*, by BATCHELOR, *J.*, concurring, that the finding of fact against the plaintiff that he was excluded to his knowledge from enjoyment of joint property by defendants Nos. 1 to 3 from 1890, was wholly independent of, and unaffected by, the decree of 1898 which only decided that the family and the property were joint and that the property was consequently partible. BABAJI AKOBA *v.* DATTU LAXMAN (1912)
**I. L. R. 37 Bom. 64**

**Sch. II, Arts. 127, 142**—*A co-parcener in possession of joint lands on behalf of all co-parceners—Alienation by the co-parceners without knowledge of the rest—Adverse possession of his vendee.* Certain lands belonging to the joint family of plaintiffs and defendant No. 1 were in the possession of defendant No. 1 on behalf of the family. In 1880, he alienated them to defendant No. 2 but remained in possession on executing a rent-note in favour of the vendee. The plaintiffs brought a suit in 1906 to recover by partition their share in the lands. The defendant No. 2 pleaded in defence his adverse possession of the lands from 1880. *Held*, that the possession by defendant No. 1 before the alienation being for himself and his co-parceners and being thus of a fiduciary character, it could not begin to be adverse to the co-parceners in the absence of intimation conveyed by him to them that he intended to exclude them. MALKAPPA *v.* MUDKAPPA (1912)
**I. L. R. 37 Bom. 84**

**Sch. II, Arts. 142, 144**—*Sole owner permitting another, under mistake, to hold joint possession for more than 12 years—Suit to recover exclusive possession—Limitation—Consent—Act quiescence—Estoppel—Mistake—Co-sharers, adverse possession as between—Unity of possession of tenants-in-common, consequences of.* Where *A* is the owner of an estate in which the disputed land is situated and *A* and *B* are joint owners

**LIMITATION ACT (XV OF 1877)—*contd.***

**——— Sch. II, Art. 142—*concld.***

in an adjoining estate, and the land in dispute has been held by *A* and *B* by mutual consent as part of their joint estate for a period of more than 12 years before suit in ignorance of their rights, limitation arises either by discontinuance of possession by *A* under Art. 142 or by adverse possession of *B* under Art. 144 of the Limitation Act. *Vasudeva* v. *Magunı, I. L. R. 24 Mad. 387*, referred to. *Per* JENKINS, *C.J.*—The mere fact of consent does not prevent possession being adverse. The test is whether the person who sets up adverse possession is able to show that he held for himself and if he did, the mere fact that there was acquiescence or consent on the part of the other person concerned would in circumstances like these make no difference. *Purshottam* v. *Sagaji, I. L. R. 28 Bom. 87*, referred to. *Per* CHAPMAN, *J.*—Art. 142 rather than Art. 144 of the Limitation Act applied to the case. DWARKA NATH CHOWDHURY *v.* ATUL SHIB BANERJEE (1913)

**17 C. W. N. 595**

**——— Sch. II, Art 144—*Adverse possession—"Possession of the defendant," meaning of, if includes possession of—Defendant's lessor—Nature of adverse possession which can be set up—Effect of s. 3.*** The words "possession of the defendant" in Art. 144 cannot by reference to the definition in s. 3 be held to include the possession of another person, a co-defendant, still in possession under a different title. *Padajirai* v. *Ram Rav, I. L. R. 13 Bom. 160*, distinguished. The adverse possession of a defendant must be of the same nature as that sought by the plaintiff and the defendant cannot set up his possession as a permanent lessee as adverse in a suit by the plaintiff for possession as proprietor. *Umrunnessa* v. *Md. Yar Khan, I. L. R. 3 All. 24*, followed. Where the plaintiff brought a suit for possession of certain property purchased by him at an auction-sale within 12 years from the date of sale, but after the expiry of 12 years brought the defendant-appellant on the record on the ground that subsequent to the plaintiff's purchase he had been granted a permanent lease of the property by the original defendants, the previous owners who had wrongfully retained possession since the plaintiff's purchase: *Held*, that the defendant-appellant was not entitled to add the period of his lessor's adverse possession to his own, in answer to the plaintiff's suit. LAHURI BIBEE *v.* BEJOY CHAND MAHATAP (1913) . . **17 C. W. N. 748**

**——— Sch. II, Arts. 178, 179—*Article 179 applies to initiate proceedings—Previous orders in execution, effect of, as res judicata—Civil Procedure Code (XIV of 1882), attachment under, when ceases, a question of intention—Erroneous order on a question of law, when res judicata.*** Previous orders passed in execution and allowing execution on a construction of a decree, as to mesne profits or as to interest or the like have the force of *res judicata*, though the later application be in respect of a different subject-matter. Thus if under

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**——— Sch. II, Art. 178—*concld.***

the old Civil Procedure Code (Act XIV of 1882) attachment of several properties had been made, and more than three years after such attachment sale of some of those properties was ordered, the supposition that the attachment was then subsisting, that order to sell will act as *res judicata* when a subsequent application for sale is made within three years thereafter to sell other properties originally attached. Under the old Civil Procedure Code the question whether a particular attachment subsists at a certain time was a question of intention. *Ram Kripal* v. *Rup Kuari, I. L. R. 6 All. 269, Venkatanarasimha Naidoo* v. *Papammah, I. L. R 19 Mad. 54*, and *Subbarama Ayyar* v *Nagammal, I. L. R. 24 Mad. 683*, followed. The rule that an erroneous decision on a question of law has not the force of *res judicata* does not apply to such a case. *Palanippa Chettiar* v. *Savari Naidoo, 18 Mad. L. J 548*, and *Mangalathammal* v *Narayanasami Ayyar, I. L. R. 30 Mad. 461*, distinguished. It is well established that an application intended to revive and carry through a pending execution is not covered by Art. 179 of the Limitation Act (XV of 1877) as it is not an application to initiate a new execution. *Qamar-ud-din Ahmed* v. *Jawahir Lal, I. L. R. 27 All. 334*, and *Suppa Reddiar* v. *Avudai Ammal, I. L. R. 28 Mad. 50*, followed. The right to apply to continue execution in such cases accrues from day to day and will not be barred until three years have elapsed after the proceedings have ceased to be pending. So the application is not barred under Art. 178 either. *Chalavadi Kotiah* v. *Poloori Alimelammah, I. L. R 31 Mad. 71*, followed. SUBBA CHARIAR *v.* MUTHUVEERAN PILLAI (1913)

**I. L. R. 36 Mad. 553**

**——— Sch. II, Art. 179—**

**1. ——— *Execution of decree—Applications for execution—Applications when not "in accordance with law."*** The plaintiff obtained a decree against the defendants. He sought to execute the decree by filing six *darkhasts* all within time. The lower Court held that the sixth *darkhast* was not filed in time, for the first five *darkhasts* could not be taken into consideration for purposes of limitation as they were not in "accordance with law" because every one of them sought relief or reliefs which on considering the merits of the *darkhasts*, the Court could not have granted. On appeal . *Held*, that the *darkhast* in question was in time, for the first five *darkhasts* were "in accordance with law" as each one of them claimed relief granted by and therefore within the decree and the question whether on a consideration of all the facts the Court could in the events that had happened grant the relief was only a question for trial on the merits. BANDO KRISHNA *v.* NARASIMHA (1912)

**I. L. R. 37 Bom. 42**

**2. ——— *Execution of decree—Step-in-aid of execution—Application for time to obtain copies required by s. 238 of the Civil Pro-***

**LIMITATION ACT (XV OF 1877)—*concld.***

**——— Sch. II, Art. 179—*concld.***

*cedure Code (Act XIV of 1882).* In the course of proceedings to execute a decree, the decree-holder filed an application for time to obtain certified copies of extracts required by s. 238 of the Civil Procedure Code, 1882. The second application to execute the decree was filed more than three years after the date of the first application, though it was within three years of the date of the application for time. It was sought to bring the second application within time by relying on the application for time as a step-in-aid of execution : *Held,* that the second application to execute the decree was presented in time, for the application for time to obtain certified copies required by s. 238 of the Civil Procedure Code of 1882 was a step in aid of execution. SHESHADASACHARYA *v.* BHIMACHARYA (1912)

**I. L. R. 37 Bom. 317**

**LIMITATION ACT (IX OF 1908).**

**——— s. 2(8), Sch. I, Art. 144—**

*See* ADVERSE POSSESSION.

**I. L. R. 40 Calc. 173**

**——— ss. 3, 4 and 14—*Filing suit in a wrong Court on the day of its re-opening after recess—Expiry of limitation during recess, effect of—Meaning of "prosecution" in s. 14—"Court" in s 4, meaning of.*** According to s. 14 of the Limitation Act it is only the period during which a suit is actually prosecuted in a wrong Court that can be excluded in favour of a plaintiff, but not the period before the filing of the suit, though the Court was then closed for recess. So, if the period of limitation for the suit expired during the period of recess of the wrong Court wherein the suit was filed on the day of its re-opening, the suit must be held to be barred. It is only the period of closing of the proper Court in which the suit must be instituted that can be taken account of under s. 4. *Abhoya Churn Chukerbutty* v. *Gour Mohun Dutt, 24 W. R 26,* followed. *Per* SPENCER, *J.*—Although the word "Court" in s 4 is not qualified by the adjective "proper" as it is in other parts of the Act, it would not be reasonable to take account of the closing and re-opening of any other Court in which the suit was rightly instituted. *Per* CURIAM : According to s. 3 the concessions awarded by the different sections of the Limitation Act are independent and cumulative. MIRA MOHIDIN ROWTHER *v.* NALLAPERUMAL PILLAI (1913)

**I. L. R. 36 Mad 131**

**——— s. 5—**

*See* PROVINCIAL INSOLVENCY ACT (III OF 1907) SS. 22, 46 AND 52.

**I. L. R 35 All. 410**

**——— *Appeal presented out of time—"Sufficient cause"—Miscalculation of time by pleader—Appeal rejected—Discretion, exercise of—Civil Procedure Code (Act V of 1908) s. 2—"Decree," meaning of.*** A *bonâ fide* mistake committed by a pleader in calculating the period of limitation may constitute a "sufficient cause" within the meaning of s. 5 of the Limitation Act. Whether the miscalculation does constitute a sufficient cause in any particular case must be decided by the Court having regard to all the facts and circumstances of that case. Where the Appellate Court refused to admit an appeal presented out of time because according to its view of the authorities a miscalculation by a pleader of the period of limitation was not a "sufficient cause" for not presenting the appeal in time within the meaning of s. 5 of the Limitation Act : *Held,* that the decision could be reviewed on appeal as there was no exercise of discretion by the Court. It is neither necessary nor desirable that any attempt should be made to find precisely and exhaustively the meaning of the expression "sufficient cause" which should receive a liberal construction so as to advance substantial justice when no negligence, nor inaction, nor want of *bonâ fides* is imputable to the appellant. RAKHAL CHANDRA GHOSE *v.* ASHUTOSH GHOSE (1913)

**17 C. W. N. 807**

**——— s. 6 and Art. 125—*Widow's alienation—Right of several reversioners independent—Not questioned by deceased father for twelve years—Right of minor son to question after twelve years but within three years of attaining majority.*** For the purpose of questioning an alienation made by a Hindu female possessing a limited estate, one reversioner does not claim through another, and consequently laches on the part of a father who died without instituting a suit within twelve years from the date of the alienation does not disentitle his son from filing a suit for the purpose even after twelve years after the alienation, if he was a minor at the time and files the suit within three years of attaining majority. S. 6 and Art 125 of Limitation Act considered. *Govinda Pillai* v. *Thayammal, I. L. R. 28 Mad. 57, Bhagwanta* v. *Sukhi, I. L. R 22 All 33, Abinash Chandra Majumdar* v. *Hari Nath Saha, 9 C. W. N 25, Sakyahami Ingle Rao Sahib* v. *Bhavani Bozi Sahib, I. L. R. 27 Mad 588,* and *Chinna Veerayya* v. *Lakshminarasimha, 22 Mad L. J. 375,* followed. *Mullapudi Ratnam* v. *Mullapudi Ramayya, I. L. R 25 Mad. 731,* and *Chhaganram Astikram* v. *Bai Motigavri, I. L. R. 14 Bom. 512,* not followed. *Chiruvolu Punnamma* v. *Chiruvolu Perraju, I. L. R 29 Mad 390,* referred to. *Krishnier* v. *Lakshmiammal, 18 Mad. L J. 275,* distinguished. VEERAYYA *v.* GANGAMMA (1913)

**I. L. R. 36 Mad. 570**

**——— s. 10—**

*See* WAKF . **I. L. R. 37 Bom. 447**

**——— s. 14—*Plaint filed on last day ordered to be returned for presentation in another Court on a later date—Plaint actually returned later—Interval between, if bars suit.*** Where a plaint which was filed in a wrong Court on the last day of limitation was subsequently ordered to be returned for presentation to the proper Court, but was not

**LIMITATION ACT (IX OF 1908)**—*contd.*

——— **s. 14**—*concld.*

actually returned till three days later, and was filed in the proper Court the day following. *Held*, that the suit was not barred by limitation. Where the final order is promulgated on a later date than that on which it was signed, the date of promulgation should be held to be the day on which the proceedings ended within the meaning of expl. I of s. 14 of the Limitation Act. *Abhoya Charan Chackrabartty* v. *Gour Mohan Dutt, 24 W. R. 26*, distinguished. MOHENDRA PROSAD SINGH *v.* NANDA PROSAD SINGH (1913)
**17 C. W. N. 1043**

——— **s. 18**—*Sale, application made after time to set aside—Fraud antecedent to sale, if may be proved.* Where upon an application by a judgment-debtor to set aside a sale on the ground of fraud, made more than 30 days after the sale, the Court refused to admit evidence of fraud antecedent to the sale, on the ground that such fraud was not material for the purposes of s. 18 of the Limitation Act: *Held*, that although proof of fraud antecedent to the sale does not necessarily indicate the continuance of that fraud subsequent to the sale, it may have an important bearing in the determination of the question whether there was fraud subsequent to the sale sufficient for the purposes of s. 18. The question of fraud should be considered as a whole. TOOKOO MONI DASI *v.* DWARKA NATH DRADA (1912) . **17 C. W. N. 478**

——— **s. 19**—

1. ——— *Acknowledgment of liability.* The following two letters were sent by firt and second defendants respectively to plaintiff's vakil (i) "Sir, 10th June, 1908. With reference to your letter of the 2nd instant, I request you to be so good as to furnish me with a copy of a statement of accounts." (ii) "Dear Sir, 18th June, 1908. With reference to your letter of the 2nd instant on behalf of landing contractor, Madras, I have to inform you that I wish to examine the accounts as my account does not show such an amount mentioned in your letter. I therefore request you will please forward the copy of the account or to instruct your client to send his *gumastah* with his account books." *Held*, that neither of the letters amounted to an acknowledgment of liability under the Limitation Act, s. 19. ANDIAPPA CHETTY *v.* ALASINGA NAIDU (1913)
**I. L. R. 36 Mad. 68**

2. ——— *Limitation—Acknowledgment—Requisites for valid acknowledgment. Held*, that an acknowledgment of a debt to be a valid acknowledgment within the meaning of s. 19 of the Indian Limitation Act, 1908, need not be addressed to the creditor, but may be made to some other person as, *e g*, by means of a deposition in Court. *Held*, also, that a statement in the form "the whole of Janki Prasad's mortgage money is owing," there being in existence at the time two mortgages held by Janki Prasad, must be taken to apply to both, in the absence

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——— **s. 19**—*concld.*

of evidence indicating a different signification *Monıram Seth* v. *Seth Rupchand, I. L. R 33 Calc. 1047*, and *Mylapore Iyasawmy Vyapooıy Moodliar* v. *Yeo Kay, I. L. R 14 Calc 801*, referred to. MEGH RAJ *v.* MATHURA DAS (1913)
**I. L. R. 35 All. 437**

——— **s. 20**—*Limitation—Interest—Payment of part of interest due—Suit for foreclosure.* The word "interest" in s 20 of the Limitation Act means interest or any part of the interest due. *Kollu* v. *Halki, I. L R 18 All 95*, and *Anwar Husain* v. *Lalmir Khan, I. L. R 26 All 167*, distinguished. ABDUL AHAD *v.* MAHTAB BIBI (1913) . . . . **I. L. R. 35 All. 378**

——— **s. 31**—*Limitation—Mortgage—Suit on mortgage barred under Limitation Act of 1871—Mortgagee's rights not revived by present Act. Held*, that s. 31 of the Indian Limitation Act, 1908, cannot be construed as reviving rights already time barred under the Limitation Act of 1871. JAI SINGH PRASAD *v.* SURJA SINGH (1913)
**I. L. R. 35 All. 167**

——— **s. 75**—*Bond repayable by instalments the whole to become payable "on demand" on default in paying one instalment—Meaning of "on demand"—Waiver.* A bond repayable by instalments contained the following stipulation :—"in default of our making such payment also the amount that may be found due for all future drawings shall be paid in a lump on your demand." *Held*, that the cause of action for recovery of all the instalments would not arise until demand is made by the obligee in terms of the stipulation and that in consequence the whole amount did not become due merely on failure to pay an instalment. *Hanmantram Sadhuram* v. *Arthur Bowles, I. L. R. 8 Bom. 561*, followed. The words "on your demand" mean "when you require." Failure to make the demand will constitute a waiver of the right stipulated for. *Hurri Pershad Chowdhry* v. *Nasib Singh, I. L. R. 21 Calc 542, 547*, and *Jadab Chandra Bakshi* v. *Bhairab Chandra Chuckerbutty, I. L. R. 31 Calc 297*, dissented from. KARUNAKARAN NAIR *v.* KRISHNA MENON (1913) . . **I. L. R. 36 Mad. 66**

——— **Sch. I, Arts. 19, 23**—

*See* LIMITATION.
**I. L. R. 40 Calc. 898**

——— **Sch. I, Arts. 44, 91**—

*See* EXECUTOR, SALE BY
**I. L. R. 36 Mad. 575**

——— **Sch. I, Arts. 62, 120**—

*See* CIVIL PROCEDURE CODE, 1882, s. 315 . . **I. L. R. 35 All. 419**

——— **Sch. I, Art. 75.**

——— *Bond—Option of suing for whole amount due on default of payment of in-*

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——— **Sch. I, Art. 75**—*concld.*

*stalments—Limitation.* A bond payable by instalments gave to the creditor the option of suing for the whole amount due on default in payment of any instalment or of suing for the instalments separately. Two instalments were paid ; the third was not, and more than six years after default in payment of this instalment, nothing further having been paid on the bond, the creditor sued to recover the whole amount due stating that the cause of action arose on the date when the third instalment became due. *Held*, that the suit was time-barred. *Ajudhia* v. *Kunjal, I. L. R. 30 All. 123*, distinguished. AMOLAK CHAND *v.* BAIJNATH (1913) . . . **I. L. R. 35 All. 455**

——— **Sch. I, Art. 89**—

*See* ACCOUNT, SUIT FOR
**I. L. R. 40 Calc. 108**

——— **Sch. I, Arts. 91, 120**—

——— *Limitation—Suit for declaration that nominal lessee is not the beneficial lessee but merely benamidar for the plaintiff Held*, that a suit for declaration that the defendant, whose name appeared in a certain lease as lessee, had no interest under the lease and that the person really interested in the lease was the plaintiff, was governed as to limitation by Art. 120 and not by Art 91 of the first schedule to the Indian Limitation Act, 1908, the cause of action accruing to the plaintiff when his position as a lessee was challenged. BASANT LAL *v.* CHHIDAMMI LAL (1913) . . . . **I. L. R. 35 All. 149**

——— **Sch. I, Art. 95**—*Relief not claimed distinctly on the ground of fraud—Executor—Suit without probate—Decree—Limitation from the date of testator's death—Fraud in the performance of contract, no ground for rescission—Partnership—Fresh agreement—Novation—Suit for an account on the footing of continuance of original partnership—Suit not maintainable* Art 95, Sch I of the Limitation Act (IX of 1908) has no application where on the face of the plaint no equitable relief is claimed on the ground of fraud. *Abdul Rahim* v. *Kirparam Daji, I. L. R 16 Bom. 186*, and *Gour Mohun Gouli* v. *Dinonath Karmokar, I. L. R 25 Calc. 49*, referred to. An executor is capable of instituting a suit without obtaining a probate although he might not be able to proceed as far as decree without obtaining a probate. Fraud in the performance of a contract, apart from its making, is no ground for rescission and restoration of the parties to the position in which they were before the contract was entered into. A testator appointed his widow as the guardian of his minor children and executrix (by tenor) of his will. On his death the widow consented to the retention of the testator's share in a partnership business by the surviving partners and subsequently to a transfer of the same to another business. In an action brought by one of the testator's sons as administrator against the surviving partners, for

**LIMITATION ACT (IX OF 1908)**—*contd.*

——— **Sch. I, Art 95**—*concld.*

an account of all the assets of the testator at the time of his death retained and employed by the defendants in their business: *Held*, dismissing the suit, that the testator's widow was perfectly competent as his executrix to enter into the arrangement, which was a *novatio*, with the surviving partners so as to bind the estate and the suit against the partners on the footing of a continuance of the original partnership was not maintainable. JAMSETJI NASSARWANJI *v* HIRJIBHAI NAOROJI (1912) . . **I. L. R. 37 Bom. 158**

——— **Sch. I, Arts. 97, 62**—*Failure of consideration—Sale of land—Purchaser stepping into possession—Loss of possession at the suit of a third party, the real owner—Suit to recover purchase-money from vendor—Limitation.* In 1903, the defendant sold certain land to the plaintiff under the *bonâ fide* belief that he was entitled to do so and placed the plaintiff in possession. In 1909, the true owner of the land recovered possession thereof from the plaintiff. In a suit by the plaintiff to recover the purchase-money from the defendant, the Court of the first instance held that the suit was barred by limitation under Art. 62 of the First Schedule to the Limitation Act (IX of 1908), for the purchase-money paid to the defendant was money had and received to the plaintiff's use. On appeal it was held that the claim was within time, under Art. 97 of the Act. On appeal to the High Court: *Held*, that the suit was governed by Art. 97, inasmuch as possession given under the purchase to the plaintiff was an existing consideration as long as it lasted. *Hanuman Kamat* v. *Hanuman Mandur, I. L. R. 19 Calc 123*, followed. NARSING SHIVBAKAS *v.* PACHU RAMBAKAS (1913) **I. L. R. 37 Bom. 538**

——— **Sch. I, Art. 110**—*Madras Rent Recovery Act (VIII of 1865), ss. 9 and 10—When rent ascertained and payable.* Rent is payable, within the meaning of Art 110 of Sch I of the Limitation Act only when it is ascertained. When proceedings are taken by the landlord under s. 9 of the Madras Rent Recovery Act after the end of the *fasli* to enforce acceptance of a *patta* tendered within the *fasli*, the landlord has to await an adjudication under s 10 of the Act and limitation begins to run in respect of a suit for rent only from the date of such adjudication, as it was only then that it can be said that the rent for the suit *fasli* was ascertained *Rangayya Appa Rao* v *Bobba Sriramulu, I L. R 27 Mad. 143*, followed. SINGARAM PILLAI *v.* SYED GOLAM GOUSE SHA (1913) . **I. L. R. 36 Mad. 438**

——— **Sch. I, Arts. 110, 116**—*Registered lease—Suit to recover arrears of rent—Limitation.* Art. 116, Sch. I, of the Limitation Act (IX of 1908) applies to suits for debts or sums certain due upon registered instruments. LALCHAND NANCHAND *v.* NARAYAN HARI (1913)
**I. L. R. 37 Bom. 656**

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Art. 118—*Hindu Law—Adoption—Suit questioning the validity of adoption—Limitation—Adoption of an orphan—Entries in Revenue register.* A suit questioning the validity of an adoption would be time-barred if not brought within six years under Art. 118, Sch. I of the Limitation Act (IX of 1908). *Shrinivas* v. *Hanmant, I. L. R 24 Bom. 260*, followed *Thakur Turbhuwan Bahadur Singh* v. *Raja Rameshar Baksh Singh, L. R. 33 I. A. 156*, and *Umar Khan* v. *Niaz-ud-din Khan, L. R. 39 I A. 19*, explained and distinguished The adoption of an orphan is not valid in law. The Collector's Register is purely for the purposes of Government Revenue and its entries are not evidence of title. SHRINIVAS SARJERAV *v.* BALWANT VENKATESH (1913) . . . . I. L. R. 37 Bom. 513

——— Sch. I, Art. 120.

*See* NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883), s. 10 . I. L. R. 35 All. 308

——— Sch. I, Art. 128—*Execution of decree—Limitation—Step in aid of execution—Application for transfer of decree—Civil Procedure Code (1882), s. 223. Held,* that an application made to the Court passing a decree to transfer it for execution to another Court is an application to take a step in aid of execution within the meaning of of Art. 182 of the first schedule to the Indian Limitation Act, 1908. *Chandra Nath Gossami* v. *Guroo Prosunno Ghose, I. L. R 22 Calc. 375*, followed. TODAR MAL *v.* PHOIA KUNWAR (1913) I. L. R. 35 All. 389

——— Sch. I, Art. 132—*Limitation—Malikana—Suit for malikana—Decree asked for against property charged.* Where a plaintiff sued for the recovery of *malikana* for 11 years and claimed a decree against the property on which the *malikana* was charged, it was *held* that the suit was within time having regard to Art. 132 of the first schedule to the Indian Limitation Act, 1908. *Kallar Roy* v. *Ganga Pershad Singh, I. L. R 33 Calc. 998*, distinguished. SHAIDA ALI *v.* PHULLO (1913) . . . . I. L. R. 35 All. 185

——— Sch. I, Arts. 138, 144—*Execution of decree—Successive purchasers of same property—Suit by subsequent purchaser to recover from earlier purchaser—Limitation.* Art. 138 of the Limitation Act only applies to suits in which the auction-purchaser is the plaintiff and the judgment-debtor or some one claiming through him, is the defendant. *Ram Lakhan Rai* v. *Gajadhar Rai, I. L. R. 34 All. 224*, and *Khiroda Kanta Roy* v. *Krishna Das Laha, 12 C. L. J. 378*, referred to. BHAGWANT SINGH *v.* BHOLI SINGH (1913) I. L. R. 35 All. 432

——— Sch. I, Art. 154.

*See* SANCTION FOR PROSECUTION I. L. R. 40 Calc. 239

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Art. 181—

*See* EXECUTION OF DECREE. I. L. R. 35 All. 178

——— Sch. I, Art. 182—

1 ——— *Suit for account—Court-fee paid months after date of judgment—Starting point of limitation—Step in aid of execution.* For the purpose of Art. 182 of the first schedule of the Limitation Act, the date on which the Court passed its judgment is the "date of the decree," and the fact that the Court-fee required to be paid in order to validate the decree (which was passed in a suit for account) was not put in till some months later, did not give a different starting point for computing the period of limitation. The payment of the Court-fee did not constitute a step in aid of execution within the provisions of the Limitation Act. BHAJAN BEHARY SHAHA *v.* GIRISH CHANDRA SHAHA (1913) 17 C. W. N. 959

2. ——— *Execution of decree of Presidency Small Cause Court—S. 48, Civil Procedure Code (Act V of 1908) not applicable to such Court—Transfer to City Civil Court for execution of a decree more than 12 years old—Art. 182 applicable—S. 48 applicable to City Civil Court, no bar.* Although a decree may be transferred by the Court which passed it to another Court, for execution, the law of limitation applicable for its execution is that applicable to the decrees of the former Court, *i.e*, of the Court which passed them. A different rule will lead to anomalous consequences. A decree of the Presidency Small Couse Court (Madras) passed in 1896 was transferred for execution to the City Civil Court. S 48, Civil Procedure Code, not being applicable to the Court of Small Causes: *Held,* that an application for the execution presented to the City Civil Court in 1910 was not barred, the article applicable to the cause being Art 182 of the Limitation Act; that the fact that s. 48 of the Civil Procedure Code was applicable to the City Civil Court, was immaterial. *Sambasiva Mudaliar* v. *Ponchanada Pillai, 17 Mad. L. J. 441, I. L. R 31 Mad 24, Tincowrie Dawn* v. *Debendro Nath Mookerjee, I. L. R 17 Calc. 491*, and *Jogemaya Dassi* v. *Thackumani Dassi, I. L. R. 24 Calc. 473*, followed. *Her Highness Ruckmaboye* v. *Lulloobhoy Mottichand, 5 Moo. I. A. 234*, not applicable *Per* CURIAM. A transfer of a decree by the Court which passed it to another Court does not make the decree one passed by the latter Court. Even after transfer the control of the execution is still left in several respects in the hands of the Court which passed the decree, *e.g.*, recognition of assignment, application for execution against legal representative, stay of execution, issuing precepts and certificate of non-execution or partial execution, etc. SREE KRISHNA DOSS *v.* ALUMBI AMMAL (1913) . . I. L. R. 36 Mad. 108

3. ——— *Part of a decree containing unascertained amount—Execution of whole decree three years after ascertainment—No*

LIMITATION ACT (IX OF 1908)—*contd.*

——— Sch. I, Art. 182—*contd.*

*bar—Policy of Limitation Act as to period of limitation for execution of decrees.* For the purposes of limitation regarding execution of a decree, the decree must be taken as a whole and ordinarily when a portion of the decree is not executable by reason of the fact that the amount due under that portion is left to be determined at a future time, limitation begins to run as regards execution of the whole decree only from the time of ascertainment of the amount left undetermined, even though it might have been open to the party to have executed the other portions earlier. *Haji Ashfaq Hussain* v. *Lala Gouri Sahai, 13 C. L. J 351, I. L. R 33 All 264, Ratnachalam Ayyar* v. *Venkatarama Ayyar, I. L. R 29 Mad 46* and *Krishnan* v *Nilakandan, I. L. R 8 Mad. 137,* followed. *Gopal Chander Manna* v. *Gosain Dass Kalay, I. L R 25 Calc 594, Krishnama Chariar* v. *Mangammal, I. L. R 26 Mad 91, Abdul Rahiman* v. *Maidin Saiba, I. L. R 22 Bom 50,* and *Gouri Sahai* v. *Ashfak Husain, I. L. R 29 All 623,* applied. *Subramanya Chettiar* v. *Alagappa Chettiar, I. L. R 30 Mad 268,* and *Nepal Chandra Sadookhan* v. *Amirta Lall Sadookhan, I. L. R. 26 Calc. 888,* referred to. C. M. A. No. 74 of 1913 (unreported), not followed. A decree in a second appeal, dated 30th July 1906, was as follows :—"Appellant (defendant) do pay respondent (plaintiff) Rs. 64-11-4 for his costs in this second appeal, Rs. 78-3-7 for his costs in the memorandum of objections and also his costs in the lower Appellate Court which will be ascertained and taxed by that Court." The costs in the lower Appellate Court were ascertained by that Court on 1st December 1906. The application for the execution of the whole decree was made on 7th August 1909, *i.e.,* more than three years after the decree in second appeal but within three years after ascertainment by the lower Appellate Court : *Held,* that the execution of the decree was not barred. The policy of the Limitation Act in the case of execution of decrees is to lay down a simple rule and to treat the decree as a whole except when the decree itself directs that different portions of the relief granted are to be rendered by the defendant to the decree-holder at different times. *Per* CURIAM : Under Art 182, there is only a single starting point, where there has been an appeal, review or amendment, although it might be open for a decree-holder to apply for the execution of a part of the decree before proceedings in appeal, review or amendment have terminated. VYDIANATHA AIYAR *v.* SUBRAMANIA PATTER (1913) **I. L. R. 36 Mad. 104**

4. ——— *Revision to the High Court—Order in, not giving any fresh starting point for execution of original decree—Effect of reversal or modification in revision—"Appeal," meaning of, in Limitation Act—Letters patent appeal from revisions, no "appeal."* An order of the High Court passed in the exercise of its revisional powers is not an order on an "appeal" within the meaning of Art. 182, sub-cl. (*2*), so as to create a fresh starting point for the calculation of limitation. *Per* CURIAM : Unlike the word "appeal" in ss. 15 and 39 of the Letters Patent, the word "appeal" in the Limitation Act is used in the narrower sense so as to exclude a revision ; this is clear from the three classifications in the Limitation Act, *viz*, "suits, appeals and applications," which last include applications for revision. If the High Court interferes on revision, either there is a decree passed by the High Court which may be executed under the first clause of Art. 182 or the case is sent down with a direction to the lower Court to amend its decree. The latter appears to be the regular course and in such event there is no room to employ any sub-clause other than sub-cl (*1*) or the new sub-cl. (*4*). Where a revision petition is simply dismissed, no fresh starting point of limitation arises. When the order appealed against cannot give any fresh starting point (*viz.,* the order in the revision petition) an order in a Letters Patent appeal therefrom, cannot give one, as if it were an appeal within the meaning of Art 182. *Chappan* v. *Moidin Kutti, I. L. R 22 Mad. 68, Secretary of State for India in Council* v. *British India Steam Navigation Company, 15 C. W. N. 848,* and *Harish Chandra Acharja* v. *Nawab Bahadur of Murshidabad, 15 C. W. N. 879,* distinguished. Judgment of WALLIS, J confirmed. SUBRAMANIA PILLAI *v.* SEETHAI AMMAL (1913) **I. L. R. 36 Mad. 135**

LIMITATION ACT (IX OF 1908)—*concld.*

——— Sch. I, Art. 182—*concld.*

——— Sch. I, Art. 182, cl. (*5*)—

——— *Decree—Execution—Step in aid of execution—Application for certificate under Succession Certificate Act (VII of 1889).* An application by the representative of a judgment-creditor to obtain a certificate under the Succession Certificate Act (VII of 1889) is not a step-in-aid of execution within the meaning of the Limitation Act, 1908, Sch I, Art 182, cl (*5*). MURGEPPA MUDIWALLAPPA *v.* BASAWANTRAO (1913) . . . **I. L. R. 37 Bom. 559**

LIS PENDENS.

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), s. 52.
**I. L. R. 37 Bom. 427, 621**

LORRY (HAND-DRAWN).

*See* PUBLIC CONVEYANCES ACT (BOM. ACT VI OF 1863), s. 1.
**I. L. R. 37 Bom. 374**

## M

MADRAS ACTS.

——— 1865—VIII.

*See* RENT RECOVERY ACT, MADRAS.

MADRAS ACTS—*concld.*

——— 1884—IV.

*See* MADRAS DISTRICT MUNICIPALITIES ACT

——— 9 5—I II.

*See* HEREDITARY VILLAGE OFFICES ACT, MADRAS

——— 1900—I.

*See* MALABAR TENANTS' IMPROVEMENT ACT.

——— 1903—I.

*See* PLANTERS' LABOUR ACT, MADRAS.

——— 1908—I.

*See* MADRAS ESTATES LAND ACT.

MADRAS DISTRICT MUNICIPALITIES ACT (IV OF 1884).

——— s. 10—

*See* RIGHT OF SUIT.
I. L. R. 36 Mad. 120

——— s. 191—*No right to farm slaughtering fees—Contract of farming such fees void and unenforceable—Contract Act, ss. 11 and 23—Powers of Corporations to contract.* Farming out, by a municipality, of its right to collect fees on the slaughter of animals, which the municipality is entitled to levy under s. 191 of Madras District Municipalities Act (IV of 1884), is unauthorized and *ultra vires*. A contract of lease which has the effect of farming out such a right is void and unenforceable under ss. 11 and 23 of the Contract Act (IX of 1872) as being beyond the competency of the Municipal Corporation to enter into, and therefore prohibited *Held*, that any amount due to the municipality under such a contract cannot be recovered. Decision of WALLIS, *J.*, in *Corporation of Madras* v. *Musthan Sait* [*C.S. No. 244 of 1907*]; *21 Mad. L. J., 788*, and *Marudamuthu Pillai* v. *Rangasami Moopan, I. L. R. 24 Mad. 401*, applied. Halsbury's Laws of England, Vol. VIII, article 805, Corporation's Title, referred to. *Abdulla* v. *Mammod, I. L. R. 26 Mad 156*, distinguished *Per* CURIAM: The right of farming out is not necessary to the exercise of the right of levying as such fees may be naturally and easily collected by Municipal subordinates. The fact that there is an express power to farm out tolls negatives an implied power to farm out other kinds of fees. The fact that the Municipal Account Code contains provisions for the farming out of slaughtering fees and other taxes besides tolls is no guide to the interpretation of the Act in this respect. *Quære:* Whether s. 11 of the Contract Act is not exhaustive and does not deal competency of a corporation to contract? MUNICIPAL COUNCIL, KUMBAKONAM *v.* ABBAHS SAHIB (1913)
I. L. R. 36 Mad. 113

——— s. 279—

*See* RIGHT OF SUIT.
I. L. R. 36 Mad. 373

MADRAS ESTATES LAND ACT (I OF 1908).

——— ss. 3 (*10*), 19, 189—

*See* RENT . . I L. R. 36 Mad. 7

——— ss. 3, 53, 189 and Sch. A, Art. 8—*Suit for cist, local cess, village cess by an ijaradar—Maintainability only in Revenue Court—Exchange of patta and muchilika not necessary for recovery of rent by suit under Estates Land Act—'Ijaradar' and 'Rent,' definitions of—Article 13 of schedule of the Provincial Small Cause Courts Act (IX of 1887).* A suit by an ijaradar of a share of a village governed by the Estates Land Act (Madras Act I of 1908), for recovery of cist, local cess and village cess due by a ryot is cognisable by virtue of s. 189 and schedule A, art. 8 of the Act only by a Revenue Court and not by a Small Cause Court, as all the above items sought to be recovered are by s. 3 of the Act included in the term 'rent' and as an 'ijaradar' is according to s. 3 (*5*) of the Act a 'landholder' being entitled to collect rent by virtue of a transfer from the owners. No exchange of patta and muchilika is necessary under the Estates Land Act for recovery of rent by suit; the same being necessary according to s. 53 only in case where the landholder wishes to distrain or sell the ryot's movables or his holding. It is wrong to hold that article 13 of the schedule to the Provincial Small Cause Courts Act (IX of 1887) applies to a suit for land cess or village cess under the above circumstances. Second Appeal No. 680 of 1910 (unreported), followed. PERRAJU GARU *v* SUBBARAYUDU (1913)
I. L. R. 36 Mad. 126

——— s. 185—

*See* EVIDENCE . I. L. R. 36 Mad. 168

MAGISTRATE.

*See* PRACTICE . I. L. R. 37 Bom. 144

——— duties of—

*See* ATTACHMENT . I. L. R. 40 Calc. 105

MAGISTRATE, JURISDICTION OF.

*See* DISPUTE CONCERNING LAND.
I. L. R. 40 Calc. 982

MAHA-BRAHMAN

*Agreement as to distribution of offerings—Construction of agreement* The members of a family of Maha-Brahmans entered into an agreement amongst themselves whereby certain members of the family were to take the offerings made on certain days of the month, and the other members of the family the offerings made on the other days. *Held* by BANERJI and LYLE, *JJ.* (RICHARDS, *C.J.* dissenting), that the effect of such an agreement was that if an offering was made to a member of the family on a day which belonged to the other branch, he was bound to account for it to the branch to which the day belonged. *Per* RICHARDS, *C.J.*—Such an agreement as above described

**MAHA-BRAHMAN**—*concld*

would not prevent a person who wished to do so from making a special individual gift to a member of the family even on a day which was appropriated by the agreement to the other branch. *Doorga Pershad* v. *Budree, 6 N.-W. P. H. C.* 189, 191, and *Oochi* v. *Ulfat, I. L. R. 20 All. 234*, referred to. SONA DEI *v.* FAKIR CHAND (1913) . . . . **I. L. R. 35 All. 412**

**MAHANT.**

*See* AGRA TENANCY ACT (II OF 1901), S. 11 *et seq.* **I. L. R. 35 All. 474**

**MAHOMEDAN FAMILY**

*See* MORTGAGE . **I. L. R. 40 Calc. 378**

**MAHOMEDAN LAW.**


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*See* CIVIL PROCEDURE CODE, 1908, S 92 (*1*) . . . **I. L. R. 35 All. 98**

**MAHOMEDAN LAW—ENDOWMENT.**

———*Endowment—Creation of endowment—Wakf by dedication or user—Graveyard, land used as—Presumption of ancient origin of shrine and burial place—Panjab Land Revenue Act (XVII of 1887), s. 44—Entry of ownership in record-of-rights at settlement.* In this case the Judicial Committee (affirming the decision of the Chief Court of the Punjab) *held*, on the evidence, that the land in suit (known as the Mai Pak Daman graveyard) which had been used from time immemorial by the Mahomedan community of Multan for the purpose of burying their dead, formed part of a graveyard set apart for the Mahomedan community, and that by user, if not by dedication, the land was *wakf*. In the record-of-rights of the last settlement an area of land, which comprised the land in suit, was entered as "in the possession of Mahomedans," and was described as *kabristan* or *ghair-mumkin kabristan* (grave yard or unculturable land forming portion of a graveyard); and in the ownership column the name of the defendant (now represented by the Court of Wards) was entered as owner. Their Lordships said: "It would seem that he was properly entered as owner, being trustee and custodian of the shrine of the saint Mai Pak Daman, and being or claiming to be the recognised head of the Mahomedan community in Multan;" and *held*, that, under s. 44 of the Punjab Land Revenue Act (XVII of 1887), the entry not having been disproved, must be presumed to be correct. COURT OF WARDS *v.* ILAHI BAKHSH (1912) **I. L. R. 40 Calc. 297**

**MAHOMEDAN LAW—ENDOWMENT**—*concld.*

**MAHOMEDAN LAW—GIFT.**

———*Gift to a Mopla governed by Mahomedan Law on his marriage not void on his wife's death or divorce—No reverter to donor.* Under the Mahomedan Law a girl when married passes over to her husband's family and there is no obligation on the members of her natural family to maintain her after her marriage, even if she is divorced. So, in the absence of any usage among Moplas governed by Mahomedan Law, a gift made to the husband of a Mopla girl does not become void and does not revert to the members of her natural family, when the girl dies or is divorced The rule is otherwise among people governed by Marumakkatayam Law. *Mariyam* v. *Abdulla* [Second Appeal No 1746 of 1895 (unreported)], referred to. PAKRICHI *v.* KUNHACHA (1913) . . . **I. L. R. 36 Mad. 385**

**MAHOMEDAN LAW—HUSBAND AND WIFE.**

*See* CONTRACT ACT (IX OF 1872), S. 25. **I. L. R. 37 Bom. 280**

**MAHOMEDAN LAW—INHERITANCE.**

———*Family custom at variance with the law, if may be proved—Bengal, N.-W. P. and Assam Civil Courts Act (XII of 1887), s. 37.* Where in a suit by a Mahomedan lady against her brothers for recovery of her share in their father's property, the defendants having set up the plea that according to family custom female descendants could not inherit in the presence of male descendants, the Courts in India refused to admit evidence in support of the alleged custom on the ground that evidence of custom at variance with the ordinary rules of Mahomedan Law was inadmissible in regard to matters mentioned in s. 37 of the Bengal, N.-W. P. and Assam Civil Courts Act: *Held*, reversing the Courts below, that evidence with respect to the issue as to family custom should be admitted. ISMAIL KHAN *v.* SHEOMUKH RAI (1912) . . **17 C. W. N. 97**

**MAHOMEDAN LAW—MAINTENANCE**

———*Cutchi Memons—Minor son, right of, to sue father for maintenance—Extent of maintenance properly grantable where the custody of the minor child is withheld from the father—Maintenance not to be charged on property devolving on the father from his father—Cutchi Memon's son can claim no distinct interest in his father's property* The plaintiff, a minor under the age of seven years, sued his father for maintenance and prayed that such maintenance should be a charge on the defendant's share in certain property left by the defendant's father. The plaintiff was the defendant's son by a wife divorced at the date

MAHOMEDAN LAW—MAINTENANCE —*concld.*

of the suit. The parties were Cutchi Memons. *Held*, that the rights of the plaintiff must be determined by Mahomedan law and that under Mahomedan law a minor son was entitled to sue his father for maintenance even though the father was not entitled to claim the custody of the child and such custody was withheld from him. *Held*, however, that such maintenance should amount only to bare subsistence for the son and not to maintenance according to the condition in life of the father. Such maintenance could not be made a charge on the property left by the defendant's father as the parties, being Cutchi Memons, were governed by Mahomedan law except with regard to inheritance and succession. MAHOMED JUSAB *v.* HAJI ADAM (1911)

**I. L. R. 37 Bom. 71**

MAHOMEDAN LAW—WAKF.

*See* WAKF . **I. L. R. 37 Bom. 447**

1. ——— *Subsequent failure of title of waqif—Right of mutawalli to sue on indemnity bond executed in favour of waqif as purchaser—Right of plaintiff to shift basis of claim during suit—Practice.* A purchased a village, the vendors giving him an indemnity bond in case he should be dispossessed. A then made a wakf of the property purchased, naming himself as mutawalli and after him his son *M*. A lost the property as the result of a suit, and subsequently (A meanwhile having died) *M* sued as mutawalli to enforce the terms of the indemnity bond. *Held*, that the wakf was invalid, and that *M* could not be permitted to change the character of the suit by claiming as one of the heirs of *A*. *Per* CHAMIER, *J*.—Even if the wakf was valid, the mutawalli was not entitled to maintain the suit in the absence of a transfer to him as such of the vendee's rights under the indemnity bond. MASIH-UD-DIN *v.* BALLABH DAS (1912) . . **I. L. R. 35 All. 68**

2. ——— *Wakf—Dedication subject to annuities payable to the members of the settlor's family.* Where a *wakfnama* provided that about two-thirds of the income of the property were to be paid as allowances to the wife and children of the settlor and only about a third was to be spent for religious and charitable purposes, and it was further provided that the allowances to the wife and children would have to be reduced in the event of the income of the estate being reduced, but there was no provision that the amount to be spent for religious and charitable purposes was to be reduced for any reason though the amount might be increased with the increase of the income of the estate: *Held*, that the wakf was valid under the Mahomedan law. GHANI MIA *v.* ADAK PATARI (1913) . **17 C. W N. 1018**

MAHOMEDAN LAW—WORSHIP.

——— *Wakf—Right of Mahomedans to worship in mosques —Suit by individual Mahomedans whose right is infringed —Civil Procedure Code, 1908, O. I, r. 8.* Every Mahomedan who has a right to use a mosque for purposes of devotion, is entitled to exercise such right without hindrance and is competent to maintain a suit against anyone who interferes with its exercise, but, if he brings his suit in his personal capacity and not on behalf of the whole Mahomedan community, the decision will be binding only as between the plaintiff and the defendant and cannot be taken advantage of by, or be binding on, the Mahomedan community in general *Jawahra* v. *Akbar Husain, I. L. R. 7 All. 178*, and *Dasondhay* v. *Muhammad Abu Nasar, I. L. R. 33 All. 660*, followed. RAM CHANDRA *v.* ALI MUHAMMAD (1913)

**I. L. R. 35 All. 197**

MAHOMEDAN LAW—WORSHIP—*concld.*

MAINTENANCE.

*See* MAHOMEDAN LAW—MAINTENANCE.

**I. L. R. 37 Bom. 71**

*See* MALABAR LAW.

**I. L. R. 36 Mad. 593**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S 52 . **I. L. R. 37 Bom. 621**

——— Marumakkathayam, law of—

*See* MALABAR LAW.

**I. L. R. 36 Mad. 593**

——— separate—

*See* ALIYASANTANA LAW.

**I. L. R. 36 Mad. 203**

——— separate, when entitled to—

*See* MALABAR LAW.

**I. L. R. 36 Mad. 591**

MAINTENANCE GRANT.

*See* EXECUTION OF DECREE

**I. L. R. 40 Calc. 623**

MAJORITY.

——— age of—

*See* MAJORITY ACT (IX OF 1875), S. 3.

**I. L. R. 35 All. 150**

MAJORITY ACT (IX OF 1875).

——— s. 3—

——— *Guardian and minor—Effect of appointment of Hindu widow as guardian of her minor sons—Sale of minor's property.* A Hindu died leaving a widow and two minor sons. The widow was appointed in 1890 guardian of the two sons, and in 1891 obtained sanction from the District Judge for the sale of half of the property of the minors In 1906, the widow and the elder son, who had then attained majority, sold part of the property of the sons amounting to somewhat less than half. Within three years of his coming of age the younger son sued for a declaration that the sale of 1906 and a mortgage executed in 1902 were not binding on his interest in the pro-

**MAJORITY ACT (IX OF 1875)**—*concld.*

——— **s. 3**—*concld.*

perty purporting to be dealt with thereby. *Held*, (1) that the appointment of the mother as guardian had the effect of prolonging the minority of both sons until they reached the age of twenty-one years ; and (2) that the sanction of the Judge given in 1891 could not validate a sale which was not made until 1906. *Gharib-ullah* v. *Khalak Singh, I. L. R. 25 All. 407*, distinguished. SHAMI NATH SAHI *v.* LALJI CHAUBE (1913)
**I. L. R. 35 All. 150**

**MAKAN.**

*See* RES JUDICATA.
**I. L. R. 37 Bom. 224**

**MALABAR LAW.**

1. ——————*Karamkari tenure in South Malabar—Alienation by tenure holder, effect of, even in the absence of clause for re-entry.* A holder of land on *Karamkari* or *Karaimakari* tenure in South Malabar has only a heritable or permanent right of cultivation but not a right of alienation, which event puts an end to the tenure ; and the landlord entitled to the reversion is entitled to possession thereupon, even in the absence of an express provision for re-entry. Moore's 'Malabar Law and Custom,' page 308, referred to. *Parameshri* v. *Vittappa Shanbaga, I. L. R. 26 Mad. 157*, and *Netrapal Singh* v. *Kalyan Das, I. L. R. 28 All. 400*, distinguished. *Obiter :* A *karamkari-holder* in North Malabar has no heritable right at all. ACHUTHA MENON *v.* SANKARA NAIR (1913) . . **I. L. R. 36 Mad. 380**

2. ——————*Want of harmony among some members—Separate living of one—When entitled to separate maintenance.* A junior member of a Malabar tarwad leaving the tarwad house on the ground that he or she does not feel quite comfortable there, or is not able to live there in complete harmony with others so as to ensure happiness, is not entitled to separate maintenance if he or she was responsible for the discomfort complained of. When a junior member will be entitled to separate maintenance, considered. KUNCHI *v.* AMMU (1913)
**I. L. R. 36 Mad. 591**

3. ——————*Marumakkathayam law of maintenance—Wife living in her husband's house, leaving tarwad house—Right to maintenance from her tarwad.* According to Marumakkathayam law, a wife living with her husband in her husband's house is entitled to maintenance from her tarwad, in the absence of any waiver to claim the same, as leaving the tarwad house to live with her husband, is a justifiable or proper purpose. *Maravadi* v. *Panikkar, 22 Mad. L. J. 309*, followed. *Parvathi* v. *Kamaran, I. L. R. 6 Mad. 341*, referred to. *Obiter :* The Marumakkathayam law of maintenance is the same as the Aliyasanthana law prevailing in South Canara. MUTHU AMMA *v.* GOPALAN (1913)
**I. L. R. 36 Mad. 593**

**MALABAR TENANTS' IMPROVEMENTS ACT (MAD. I OF 1900).**

——— **ss. 5, 6, 9 to 18 and 19**—*Right to compensation—Contract to the contrary, made before 1886, effect of—Distinction between restriction of right to make improvements and of right to the value of improvements—Validity of each restriction.* Under the provisions of the Malabar Tenants' Improvements Act (Madras Act I of 1900), a tenant is entitled to the full value of his improvements according to the rates provided in ss. 9 to 18 ; s. 19 does not cut down his right under ss. 5 and 6 to the value of his improvements according to the rates prescribed in the Act even where a contract was entered into before 1st January 1886, limiting his right with respect to the amount of compensation claimable by him. Accordingly a restrictive provision in a document limiting the amount of compensation cannot be enforced. But contracts made prior to January 1886 limiting the right to make improvements are not affected by s 19, and are valid. *Kozhikot Pudya Kovilagath Sreemana Vikraman* v. *Chundayil Modathil Ananta Patter, I. L. R. 34 Mad. 61*, followed. *Held*, on a construction of the following provision in a *kanom* deed of 1884, " If I make chamayams (or buildings) thereon exceeding **Rs. 25** in value I shall only remove and take them at the time of surrender and shall not demand the value of improvements therefor," that the meaning of the clause was not to restrict the *kanomdar* from building but to restrict his right to the amount of compensation if he built, to Rs. 25, if he is content to take it, regard being had to the absence of any right on the landlord to require the tenant to remove any building worth more than Rs 25. *Per* CURIAM : The provision for removing is merely a recognition of the right which a *kanomdar* has always possessed to remove any improvements made by him. *Angammal* v. *Aslami Sahib, 21 Mad. L. J. 891*, referred to. PARU AMMA *v.* KUNHIKANDAN (1913) **I. L. R 36 Mad. 410**

**MALICIOUS ARREST**

*See* LIMITATION **I. L. R. 40 Calc. 898**

**MALICIOUS PROSECUTION.**

1. ——————*What has to be proved—Onus on plaintiff—What amounts to malice—Recklessness in what, amounts to malice* In a suit for damages for malicious prosecution it is not on the defendant to show that there was reasonable and probable cause but on the plaintiff to prove its absence. All that the defendant has to be satisfied about is that there is reasonable and probable cause for the charge, *i e*, reasonable grounds for believing that the plaintiff is guilty of the offence and not reasonable grounds for coming to the conclusion that the Court would convict him of it. Carelessness on the part of the defendant in deciding whether there was reasonable and probable cause would not amount to malice, and both malice and absence of reasonable and probable cause have to be proved. If a man is reckless, whether the charge be true or false, that might amount to malice, but not

**MALICIOUS PROSECUTION**—*contd*

recklessness in coming to the conclusion that there was reasonable and probable cause What would amount to reasonable and probable cause is a question of fact. VYDINADIER *v.* KRISHNASWAMI IYER (1913) . **I. L. R 36 Mad. 375**

2. ——— *Suit for damages for—Onus—Plaintiff, if must prove innocence—Judgment of discharge by Criminal Court, if conclusive.* The plaintiff in a suit for damages for malicious prosecution has, amongst other matters, to prove his innocence, if only to establish that the prosecution was commenced maliciously and without reasonable and probable cause. The finding in the criminal case acquitting or discharging him is not conclusive on the matter. *Per* BOWEN, *L. J.*, in *Abrath* v. *North Eastern Railway Co*, *11 Q. B. D. 440, 455*, approved. *Gunesh Dutt Singh* v. *Mugneeram Chowdry, 17 W. R. 283, Corea* v. *Peiris, [1909] App. Cas. 549*, referred to. MUCHI OSTA *v.* HORSMUL MARWARI (1912) . . . . . **17 C. W. N. 434**

3. ——— *Suit for, when lies—Criminal Procedure Code, prevention of offences, provision for—Malicious proceedings under such provisions, if sufficient basis for suit—"Prosecution," meaning of.* It is not that an action for damages for malicious prosecution lies only when the original proceeding was a "prosecution" in the sense in which the term is used in the Code of Criminal Procedure; it is not essential that the original proceeding should have been of such a nature as to render the person against whom it was taken liable to be arrested, fined or imprisoned. Where there has been a deliberate abuse of the process of the Criminal Court and salutary provisions framed by the Legislature to secure the prevention of offences have been utilised maliciously and without reasonable and probable cause for the harassment of the plaintiff who has thereby suffered damage in reputation and property, an action for malicious prosecution or malicious abuse of judicial process is maintainable. *Per* MOOKERJEE, *J.*—An action for maliciously putting the law in motion lies in all cases where there is concurrence of the following elements: (i) the commencement or continuance of a criminal proceeding; (ii) its legal causation by the present defendant against the plaintiff who was defendant in the original proceeding; (iii) its *bonâ fide* termination in favour of the present plaintiff; (iv) the absence of probable cause for such proceeding; (v) the presence of malice therein; (vi) damage conforming to legal standards resulting to the plaintiff. *Abrath* v. *N E. Ry Co., 11 App. Cas. 247, Cox* v. *English, Scottish and Australian Bank, [1905] App Cas. 168*, referred to. Any enforcement of the criminal law through Courts of Justice concerning a matter which will subject the accused to prosecution without regard to the technical form in which the charge has been preferred and irrespective of the grade of the criminal offence, is a sufficient proceeding upon which an action for malicious prosecution may be based. *Elsee* v. *Smith, 2 Chitty 304: 24 R R 39, Leigh* v. *Webb, 3 Esp 164*, referred to. *Per* BEACHCROFT, *J.*—If a person sets the criminal law in motion it is no defence for him to say that the law took a direction which he did not anticipate and did not desire The responsibility of the person begins with the presenting of the complaint but it does not end there and is not limited to the prayer contained in it CROWDY *v.* L O. REILLY (1912) . . . . . **17 C W. N. 554**

**MALICIOUS PROSECUTION**—*concld.*

**MALIKANA.**

——— **suit for—**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 132 . . **I. L. R. 35 All. 185**

**MAMLATDAR.**

*See* REVENUE JURISDICTION ACT (BOM. ACT X OF 1876), SS. 4(c), 5 AND 6. **I. L. R. 37 Bom. 542**

——— **decree of—**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), SS. 3, 115. **I. L. R. 37 Bom. 114**

**MAMLATDARS' COURTS ACT (BOM. II OF 1906).**

——— **s. 23**—*Suit for injunction—Mamlatdar's order—Appeal—District Deputy Collector—Jurisdiction* Under s 23 of the Mamlatdars' Courts Act (Bom Act II of 1906), the Collector or the District Deputy Collector invested with the revenue administration of a taluka, has no jurisdiction to exercise the powers of an appellate Court against any order passed by a Mamlatdar under the Mamlatdars' Courts Act (Bom. Act II of 1906). HASAN *v.* RASUL (1913) **I. L. R 37 Bom. 595**

**MANAGEMENT.**

——— **right of—**

*See* CHURCH . **I. L. R. 36 Mad. 418**

**MANDAMUS.**

*See* PLEADERSHIP EXAMINATION. **I. L. R. 40 Calc. 588**

——— **action for—**

*See* MUNICIPAL CORPORATION. **I. L. R. 40 Calc. 836**

**MÁNPÁN.**

——— **dispute as to—**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 9, SCH. II, S. 20. **I. L. R. 37 Bom. 442**

**MARRIAGE.**

*See* HINDU LAW—MARRIAGE. **I. L. R. 35 All. 265**

*See* HINDU LAW—MARRIAGE. **I. L. R. 37 Bom. 295**

*See* HINDU LAW—WILL. **I. L. R. 37 Bom. 18**

**MARRIAGE**—*concld.*

——— *Legitimacy—Co-habitation—Presumption of law in favour of legal marriage, how may be rebutted—Finding of fact based on disregard of presumption, if may be attacked in Second Appeal.* When it is proved that two persons have lived together for many years as husband and wife, and their child has always been recognised as legitimate, the presumption of law is that they were lawfully married. The presumption can be repelled only by conclusive evidence and is not displaced merely because the direct evidence of marriage which took place many years ago is not satisfactory *Piers* v. *Piers, 2 H. L. C. 331, Morris* v. *Davies, 5 Cl. & Fin 163,* and *Mouji Lal* v. *Chandrabati Kumari, I. L. R. 38 Calc. 700,* referred to. Where the lower Appellate Court reversed the finding of the trial Judge in favour of legitimacy without reference to the above principle and upon a mere balance of probabilities, its finding was set aside on Second Appeal as being contrary to law. BEPIN BEHARY DAS BAIRAGI *v.* ATUL KRISHNA DAS BAIRAGI (1911) . . **17 C. W. N. 494**

**MARRIAGE CUSTOM.**

*See* JEWISH LAW **I. L. R. 40 Calc. 266**

**MARRIED WOMEN'S PROPERTY ACT (III OF 1874)**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60 . **I. L. R. 37 Bom. 471**

**MASTER AND SERVANT.**

——— *Clerk engaged on a monthly salary—Relinquishment of employment without consent of master—Clerk not entitled to salary for broken portion of month in which he left his service Held,* that an office clerk engaged on a monthly salary is not entitled to any salary for the broken portion of a month in the course of which he leaves his service without the consent of his employer. *Ridgeway* v. *Hungerford Market Company, 3 A. & E 171, Dhumee Behara* v. *Sevenoaks, I. L R. 13 Calc. 80,* and *Ramji Manor* v. *Little, 10 Bom H. C. R. 57,* referred to. RALLI BROTHERS *v.* AMBICA PRASAD (1912) **I. L. R. 35 All. 132**

**MEDICAL WORKS.**

——— reference to—

*See* LIMITATION **I. L. R. 40 Calc. 898**

**MEMORANDUM OF APPEAL.**

*See* REFUND OF COURT-FEE **I. L. R. 40 Calc. 365**

**MEMORANDUM OF ASSOCIATION.**

*See* COMPANIES ACT, 1882, SS. 6, 40, 41. **I. L. R. 40 Calc. 1**

**MERCHANDISE MARKS ACT (IV OF 1889).**

——— ss. 6, 7—

*See* TRADE-MARK **I. L. R 40 Calc. 281**

**MESNE PROFITS**

1. ——— *Jurisdiction—Suit for recovery of possession with mesne profits—Mesne profits assessed in the execution proceedings—Amount assessed more than the pecuniary jurisdiction of the Court* A suit for recovery of possession of certain lands with mesne profits from the date of dispossession up to the date of restoration of possession, was brought in the Munsif's Court. It was decreed together with the mesne profits claimed, and the Court directed that the amount of mesne profits would be determined in the execution proceedings The decree having been affirmed on appeal, the decree-holder applied to the executing Court for ascertainment of mesne profits The total amount of mesne profits ascertained by the Munsif was Rs 1,630-8, including interest. On an objection taken by the judgment debtor that the executing Court being a Munsif, was not entitled to award mesne profits of a higher amount than Rs. 1,000. *Held,* that the executing Court had jurisdiction to award the mesne profits ascertained in the present case. *Rameswar Mahton* v *Dilu Mahton, I. L. R 21 Calc 550,* followed in principle. *Bhupendra Kumar Chakrabarti* v. *Puna Chandra Bose, 13 C L. J 132,* distinguished. PANCHURAM TEKADAR *v.* KINOO HALDAR (1912) **I. L. R. 40 Calc 56**

2 ——— *Suit for recovery of mesne profits or damages without a declaratory suit, whether maintainable—Symbolical possession—Bengal Tenancy Act (VIII of 1885), s. 157, principle laid down in.* If a person who has been dispossessed from an immovable property brings a suit for recovery of mesne profits, the suit is not maintainable The proper remedy is to institute a suit for declaration of title, and recovery of possession with mesne profits. *Lep Singh* v. *Nimar, I. L. R. 21 Calc. 244,* referred to. When the title of the plaintiff is denied by the defendant, he (plaintiff) ought not to obtain a decree for mesne profits till his title has been established in a Court of competent jurisdiction Where the title of the plaintiff is established in a Court of competent jurisdiction, that decision is conclusive between the parties for all time to come. The symbolical possession by the plaintiff is effective as against the judgment-debtor, though it may not be operative as against strangers to the suit. Where the title of the plaintiff to immoveable property has been restored, and he has obtained symbolical possession and allowed the defendant to continue in actual occupation of the land, and successfully asserted his right to be paid a fair and reasonable amount of damages for use and occupation of the land, it is not open to the defendant to question the title of the plaintiff, and there is no intelligible reason why the latter should not be allowed to maintain an action for recovery of damages for use and occupation of the land. This principle is recognised by the Legislature in s. 157 of the Bengal Tenancy Act. GIRI NARAIN CHATTERJI *v.* MODHU SUDAN MUKERJI (1911) . . . . **17 C. W. N. 324**

**MIGRATION.**

*See* HINDU LAW—JOINT FAMILY.
I. L. R. 40 Calc. 407

**MINING LEASE.**

——— *Parcels—Area stated within specified Boundaries—Alleged Deficiency—Abatement of Rent* The appellant was lessor, and the respondents lessees under a mining lease, the terms of which were contained in a kabuliyat granting the rights of cutting, raising, and selling coal beneath "400 bighas of land, described in the schedule below, in Mauza Dobari," the schedule specified boundaries and added "right in the coal underneath the 400 bighas of land within these boundaries." In a suit to recover arrears of rent the respondents alleged that they were in possession of less than 400 bighas and claimed to be entitled to an abatement of rent: *Held*, (i) that the construction of the kabuliyat as to the land included in the lease could not be varied by evidence of the negotiations which led to the contract or by evidence that there were not 400 bighas within the specified boundaries; (ii) further, that the respondents had failed to prove what was the area in fact contained within the boundaries or that of which they had been given possession. DURGA PRASAD SINGH *v.* RAJENDRA NARAYAN BAGCHI (1913)
L. R. 40 I. A. 223

**MINOR.**

*See* CONTRACT ACT (IX OF 1872), S. 11
I. L. R. 35 All. 370

*See* HINDU LAW—JOINT FAMILY.
I. L. R. 37 Bom. 340

*See* MAHOMEDAN LAW—MAINTENANCE.
I. L. R. 37 Bom. 71

*See* SUCCESSION CERTIFICATE ACT, S. 9.
I. L. R. 36 Mad 214

*See* U.P. LAND REVENUE ACT (III OF 1901), SS. 111, 112 AND 233 (*k*).
I. L. R. 35 All. 126

——— authority of—

*See* MORTGAGE I. L. R. 40 Calc. 342

——— non-representation of—

*See* APPEAL TO PRIVY COUNCIL.
I. L. R. 40 Calc. 635

——— right to question—

*See* LIMITATION ACT (IX OF 1908), S. 6, SCH I, ART. 125
I. L. R. 36 Mad. 570

——— suit by—

*See* CIVIL PROCEDURE CODE (ACT XIV OF 882), S. 462 I L R. 36 Mad. 295

1. ——— *Representation of minor in suits—Suit to set aside compromise of and decrees in suits to which minors were parties—Civil Procedure Code, 1882, ss. 443, 456 and 462—Minors unrepresented owing to fraud and misrepresentation of de facto guardian whose interest conflicted with theirs—Form of decree—Civil Procedure Code. 1908, s. 98—Specific Relief Act (I of 1877), s. 42—Question of law.* In this case the appellants sued for a declaration that a compromise of certain pre-emption suits and decrees based thereon, made on their behalf in 1899 when they were minors, were not binding on them, having been obtained by the fraud and misrepresentation of the respondent (who was then their *de facto* guardian and manager of their property) and in proceedings in which they were practically unrepresented; and they prayed that they might be restored to the position held by them prior to the date on which the compromise and decrees were made. It appeared that although the appellants were described in the proceedings as "under the guardianship" of one *H. P.*, he had never been properly appointed their guardian *ad litem* by the Court as required by s. 443 of the Civil Procedure Code, 1882 . that no *bonâ fide* application had ever been made under s. 456 to have a guardian *ad litem* appointed by the Court; and that the leave of the Court had not been obtained to enter into the compromise on the appellants' behalf as was necessary under s. 462. *Held*, that the appellants were entitled to the declaration they sought. *H. P.* had, their Lordships found, been introduced into the suits of 1899 by the respondent as the guardian or next friend of the appellants to advance the interests of the respondent and to defeat the interests of the appellants, which conflicted with those of the respondent: he had throughout acted under the directions and on behalf of the respondent and in his interest and contrary to the interests of the appellants, and the respondent had taken advantage of his position to the detriment of the appellants. There was therefore no one to protect them, and they were unrepresented in the proceedings, which were therefore not binding on them *Manohar Lal* v. *Jadunath Singh, I. L. R 28 All 585. L. R. 33 I. A. 128*, followed. S. 42 of the Specific Relief Act (I of 1877) which had been applied to the case by the majority of the Court of the Judicial Commissioner, was held not to be applicable. *Semble:* The question whether on certain stated facts the relief which the appellants prayed for should be granted or refused, was a question of law within the meaning of s. 98 of the Civil Procedure Code (Act V of 1908); and where, on a difference of opinion on that question between two Judges of the Court, the case was referred under that section to a third Judge, that was the only question he had jurisdiction to consider and decide. PARTAB SINGH *v.* BHABUTI SINGH (1913)
I. L. R. 35 All. 487

2. ——— *Minor representation of, in suit—Guardian ad litem refusing to act—Mitakshara father if proper guardian in suit on mortgage of family property by him—Hindu law, Mitakshara family—Debts, son's liability for—Mortgage decree if binds infant son who is not represented—Equity of redemption if barred by such decree—Decree, form of—Practice—Redemption, decree*

**MINOR**—*concld.*

*for, passed.* In a suit on a mortgage executed by a Mitakshara father, the father was proposed as guardian *ad litem* of his infant son by the plaintiffs, but he refused to accept service of notice on him as such and entered appearance only on his own behalf and not as guardian of his son. No further step was taken by the plaintiffs to have a guardian *ad litem* appointed for the infant and the suit was decreed: *Held*, that the infant was not represented in the suit and the decree was therefore not binding on him. *Walian* v. *Banke Behari, L. R. 30 I. A. 182, I. L. R 30 Calc. 1021*, distinguished *Khirajmal* v. *Dram, I. L. R. 32 Calc. 296; 9 C. W. N. 201*, referred to. In a suit by the infant for a declaration that the decree was fraudulent and not binding on him, it was found that the mortgage was executed for legal necessity and that the infant son was not born at the time of the mortgage. *Held*, that it would be unfair to drive the mortgagor to a fresh suit to enforce the mortgage against the infant when the case had been decided on the merits and the mortgage found binding on the infant. But although the mortgage was binding on the plaintiff he had, since his birth, a share in the equity of redemption and his right to redeem could not be shut out by a mortgage decree in a suit to which he was not a party. Although, therefore, there was no prayer to be allowed to redeem in this suit, decree for redemption was passed BALKISSEN LAL *v.* CHOWDHURY TAPESUR SINGH (1911)
**17 C. W. N. 219**

3. ——— *Minor, decree against, effect of, if void—Minor sued as major and unrepresented by guardian ad litem, if party to a suit.* A decree against a person who is neither a party nor is properly represented on the record, is a nullity and might be disregarded without any proceeding to set it aside. *Khirajmal* v. *Dram, 9 C. W. N. 201; I. L. R. 32 Calc. 296*, referred to. Where a suit for rent was brought and an *ex parte* decree passed against a person who, though sued as a major, was found to have been a minor at that time and remained unrepresented by a guardian *ad litem*: *Held*, that the minor was not a party to the suit and the decree passed against him was nullity. *Rashidunnessa* v. *Ismail Khan, 13 C. W. N. 1182, Narsing* v. *Jahi, 15 C. L. J 3*, followed. *Walian* v *Banke Behary, 7 C. W. N. 774 I. L. R. 30 Calc. 1021*, distinguished. *Held*, also, that the ignorance of the plaintiff as to the minority of the defendant did not affect the rights of the minor. PURNA CHANDRA KUNWAR *v.* BEJOY CHAND MAHATAB (1913)
**17 C. W. N. 549**

**MINORITY.**

*See* HINDU LAW—ALIENATION.
**I. L. R. 40 Calc. 966**

**MIRASI LEASE.**

*See* HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 11, 11A.
**I. L. R. 37 Bom. 37**

**MISDIRECTION.**

*See* JURY, TRIAL BY.
**I L R 40 Calc. 367**

——— *Murder—Circumstantial evidence—Possession of deceased's blood-stained ornaments and clothes—Presumption of being murderer—Verdict of jury, value of, where presumption of law not explained.* Where in a case of murder, blood-stained ornaments were found in the room occupied by the accused and the evidence established that those articles belonged to the deceased, and in the Sessions Judge's charge to the jury, there was no direction pointing out that the possession in this case if believed was a fact from which the Court might presume not merely theft or receipt of stolen property but also murder with which the accused was charged: *Held*, that this was a serious omission detracting materially from the value of the verdict and opinion of the jurors. It is especially important that a Judge should point out a presumption of this kind because jurors are often reluctant to act on that which is commonly known as circumstantial evidence. EMPEROR *v.* SHEIKH NEAMATULLA (1913)
**17 C. W. N. 1077**

**MISJOINDER.**

*See* PRELIMINARY DECREE.
**I. L. R. 37 Bom. 60**

**MISJOINDER OF CAUSES OF ACTION.**

*See* AGRA TENANCY ACT (II OF 1901), S. 34.
**I. L. R. 35 All. 512**

**MISJOINDER OF CHARGES.**

*See* CHARGE.
**I. L. R. 40 Calc. 318, 846**

**MISREPRESENTATION.**

*See* ADVERSE POSSESSION.
**I. L. R. 40 Calc. 173**

**MITAKSHARA.**

*See* HINDU LAW—JOINT FAMILY.
**I L. R 40 Calc. 407**

*See* HINDU LAW—JOINT FAMILY
**I. L. R. 35 All. 302**

**MONEY PAID UNDER DECREE.**

——— suit for—

*See* VOLUNTARY PAYMENT.
**I. L. R. 40 Calc. 598**

**MOPLA**

——— gift to a—

*See* MAHOMEDAN LAW—GIFT.
**I. L. R. 36 Mad. 385**

**MORTGAGE.**


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*See* ADVERSE POSSESSION.
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**I. L. R. 40 Calc. 784**

*See* CIVIL AND REVENUE COURTS.
**I. L. R. 35 All. 464**

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1; O. I, R 9.
**I. L. R. 35 All. 441**

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1.
**I L. R. 35 All. 484**

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 8
**I. L. R. 35 All. 116**

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 14.
**I. L. R. 35 All. 518**

*See* COURT FEES ACT (VII OF 1870), S. 7, CL. (IX) . **I L. R. 35 All. 92, 94**

*See* COURT FEES ACT (VII OF 1870), SCH. I, ART. 1; SCH. II, ART. 11.
**I L. R. 35 All. 476**

*See* EVIDENCE . **I. L. R. 35 All 194**

*See* EVIDENCE ACT (I OF 1872), S 68.
**I. L. R. 35 All. 254**

*See* HIGH COURT, BOMBAY, CIVIL CIRCULAR 96, CL. (*l*).
**I. L. R. 37 Bom 631**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 35 All. 428**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 35 All. 553, 571**

*See* HINDU LAW—WIDOW.
**I. L. R. 35 All. 311, 326**

*See* LAND REVENUE CODE (BOM. ACT V OF 1879, AS AMENDED BY BOMBAY ACT VI OF 1901), S. 56.
**I. L. R. 37 Bom. 692**

*See* LIMITATION **I. L. R 37 Bom. 326**

*See* LIMITATION ACT (IX OF 1908), S. 31.
**I. L. R. 35 All. 167**

*See* MORTGAGE DECREE.

*See* MORTGAGE IN FRAUD OF CREDITORS.

*See* MORTGAGE OR SALE.

*See* MORTGAGEE

*See* REGISTRATION ACT (XVI OF 1908), S. 50 . . **I. L. R. 35 All. 271**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882) SS. 59, 100.
**I. L. R. 35 All. 164**

**MORTGAGE**—*contd.*

——— **by agriculturist**—

*See* DEKKHAN AGRICULTURISTS' RELIEF ACT (XVII OF 1879), S 15B.
**I. L. R. 37 Bom 614**

——— **by widow**—

*See* HINDU LAW—ALIENATION
**I. L. R. 40 Calc. 721**

———**proof of execution of**—

*See* EVIDENCE ACT (I OF 1872), SS. 69, 70
**I. L. R. 35 All. 364**

## 1. CONSTRUCTION.

**1** ——— *Entire interest mortgaged for family purposes—Liability of minor son when authority may be presumed— Alienation —Onus of proof—Evidence Act (I of 1872), s. 106 —Transfer of Property Act (IV of 1882), ss. 85, 90—Civil Procedure Code (V of 1908), O. XXXIV, r. 6* Where a mortgage purports to charge the entire interest in a property, and the mortgage-money was advanced for legitimate family purposes, express or implied authority of minor co-parceners may be implied, and the mortgage may be enforced against the entire family interest. *Suraj Bunsi Koer* v. *Sheo Persad Singh, I. L R. 5 Calc. 148, L R 6 I. A. 88,* referred to. Authority to mortgage may also, according to the peculiar circumstances of a case, be implied even in cases where the mortgage-money was not advanced for legitimate family purposes. A mortgage is an alienation, even though it is for a very particular purpose, *e g*, as security only for the amounts drawn or paid on account of instalments of rent. *Gharibullah* v. *Khalak Singh, I. L. R. 25 All. 407 : L. R. 30 I A. 165,* referred to Where on the one side it is proved that the whole of the mortgage-money, with the exception of a very small portion of it, was advanced for legitimate family purpose, and there is, therefore, a sufficient foundation for a decree for sale on the mortgage, and on the other side it is not shown that the small portion of the debt was not for any immoral purpose, the smaller item may be regarded as a debt of the father binding on the son *Hunoomanpersaud Panday* v. *Munraj Koonweree, 6 Moo. I. A. 393; 18 W. R. 81 n, Luchmun Dass* v. *Giridhar Chowdhry, I. L R 5 Calc. 855, Maheswar Dutt Tewari* v. *Kishun Singh, I. L. R. 34 Calc. 184, Kishun Pershad Chowdhry* v. *Tipan Pershad Singh, I. L. R 34 Calc. 735, Lala Suraj Prosad* v. *Golab Chand, I. L. R. 28 Calc. 517,* referred to. BISWANATH PERSAD MAHTA *v.* JAGDIP NARAIN SINGH (1912)
**I. L. R. 40 Calc. 342**

**2** ——— *Construction—Redemption—Covenant that the loan would be repaid "within a year"—Mortgagor if may redeem within a year.* Unless there is an agreement to the contrary, the right of foreclosure and the right of redemption must be deemed co-extensive. Whether there is any special provisions in the contract which takes the case out of the general rule must

**MORTGAGE**—*contd.*

1. CONSTRUCTION—*concld.*

be determined upon the terms of the contract between the parties Where the mortgage-deed provided that " the money would be paid, principal and interest, within one year." *Held*, that the case fell within the class of cases in which the mortgage is payable before a certain day and not within the class where a day is fixed for the payment of the debt; and it was open to the mortgagor to redeem the mortgage within one year of the taking of the loan. PURNA CHANDRA SARMA *v.* PEARY MOHAN PAL (1912)

**17 C. W. N. 149**

3. ——— *Usufructuary mortgage followed by lease to mortgagor—Contemporaneous deeds—Interpretation— Lease on easy terms surrendered by mortgagor—Mortgagee, if may insist on appropriation of whole profits to interest—Unregistered agreement to vary mortgage-deed, if admissible—Registration Act (III of 1877), ss. 17-49—Evidence of preliminary negotiations, if admissible—Evidence Act (I of 1872), ss. 91, 92.* Where in a mortgage-bond it was stipulated that the mortgagee should be in possession of the mortgaged property and take the profits in lieu of interest, but by a practically contemporaneous instrument, the mortgagee granted a lease to the mortgagor on easy terms, reserving a rent of Rs. 4,200 only when the interest worked out to Rs. 6,000, but the mortgagor being unable to pay this rent gave up possession to the mortgagee: *Held*, in a suit for redemption of the mortgage, that the mortgagee was entitled to appropriate the whole of the profits realised by him towards interest, according to the terms of the mortgage-bond. That the mortgage and the lease were parts of one and the same transaction, but there was no inconsistency between the two instruments. It is not permissible to contradict or vary the express and unambiguous terms of a written instrument by reference to preliminary negotiations or previous conversations. An unregistered agreement purporting to set out in what manner the rents and profits of the mortgaged property were to be dealt with, at variance with the stipulation in that behalf contained in the registered mortgage-deed, was inadmissible in evidence by the provisions of the Registration Act. ABDULLAH KHAN *v.* BASHARAT HUSSAIN (1912)

**17 C. W. N. 233; I. L. R. 35 All. 48**

2. FEMALES, REPRESENTATION OF.

——— *Mortgage-bond executed by male members of Mahomedan family—No proof of custom to exclude females as in Hindu family—Female members added as defendants in mortgage suit, though not executants of bonds—Form of decree—Whether females were represented in the mortgage transaction by male members of family—Estoppel by conduct.* The appellants were the female members of a Mahomedan family which had adopted the Hindu religion in matters of

**MORTGAGE**—*contd.*

2. FEMALES, REPRESENTATION OF—*concld.*

worship, and as to which both Courts in India concurrently held that there was no custom proved excluding female members from inheritance, which was the case set up by the respondent. In a suit brought by the latter to enforce a mortgage-bond which had been executed only by the male members of the family, in which suit the appellants were also joined as defendants, the first Court made a decree against the interests of the male defendants only in the property; but the High Court decreed the suit against both the male and female defendants on the grounds that, because the female members had not actively interfered in the management of the property, the male defendants must betake to have represented them in the mortgage transaction. It appeared that in other transactions the male members of the family had dealt with the family property without the active concurrence of the females: *Held*, by the Judicial Committee, reversing the decision of the High Court, that the evidence did not prove that the male defendants had " represented " the appellants. The latter were *purdanashin* ladies, and naturally left the management of the property to their male relatives. There was nothing to show that the appellants had misled the respondent either by word or conduct to the belief that they had no proprietary interest in the property; and he made no inquiries in the matter from them or their husbands as he might have done if he had any doubt in the matter. The decree of the High Court was therefore erroneous, so far as it made the appellants liable, and should have been limited to making liable only the interests in the property of the male defendants, the executants of the mortgage-bond. AZIMA BIBI *v* SHAMALANAND (1912).

**I L. R. 40 Calc. 378**

3. INTEREST.

1 ——— **Interest**—*Preliminary decree, appeal by mortgagee against, dismissed—Mortgagee if may claim contract rate of interest up to date of payment fixed in final decree—Purchaser of equity of redemption, if personally liable* Where the mortgagee plaintiff prefers an unsuccessful appeal against the preliminary decree made in his suit and the mortgagor does not ask for extension of time to enable him to redeem, it is not open to the mortgagee to demand interest at the contract rate up to the date fixed for payment in the final decree. A purchaser of the equity of redemption is not personally liable to repay the mortgage debt. TARA CHAND MARWARI *v* BROJA GOPAL MOOKERJEE (1912) . . **17 C. W N 457**

2 ——— *Interest—Mortgage by conditional sale with no provision for post diem interest—Post diem interest not allowed.* A mortgage executed in 1869 provided for the payment of the sum of Rs. 300 with interest at Re. 1-8 per cent. per mensem in one lump sum upon a certain specified date four years from the date of

**MORTGAGE**—*contd.*

3. INTEREST—*concld.*

the mortgage. It further provided that, if the money was not paid upon that date, the property mortgaged should become the absolute property of the mortgagee. There was no stipulation of any kind as to the payment of interest after the date fixed. *Held*, that the mortgagee was not entitled to *post diem* interest. *Mathura Das* v. *Raja Narindar Bahadur, I. L. R 19 All. 39*, distinguished. *Gudri Koer* v. *Bhubaneswari Coomar Singh, I. L. R. 19 Calc. 19*, and *Moti Singh* v. *Ramoharı Singh, I. L. R. 24 Calc. 699*, followed. BALWANT SINGH *v.* GAYAN SINGH (1913) **I. L. R. 35 All. 534**

4. REDEMPTION

1. ——— *Redemption—Construction of mortgage as to the terms of redemption—Mortgage and lease to mortgagor contemporaneously granted—Mortgage executed before Transfer of Property Act (IV of 1882) came into force—Mortgagee's security reduced by portion of property being withdrawn—S. 65(a) of Transfer of Property Act—Right of mortgagee to compensation.* The plaintiff (respondent) mortgaged to the defendant (appellant) certain property by a deed, dated the 25th of August, 1880, for Rs. 70,000 for eight years. On the 29th of August (and so practically contemporaneously with the mortgage), a lease of the mortgaged property was executed by the mortgagee in favour of the mortgagor at an annual rent of Rs. 4,200, which represented interest on the mortgage debt at the rate of 6 per cent. per annum. The mortgage contained a clause that "it is agreed by mutual consent of the parties that the profits of the property mortgaged shall belong to the mortgagee in lieu of the interest on the mortgage-money, and I, the mortgagor, shall have no claim for mesne profits. The mortgagee also shall have no right to claim interest on the mortgage-money advanced by him." The lease after reciting the mortgage referred to a provision in the latter that the mortgagor should be entitled to sell a certain portion of the mortgaged property on condition that he handed over the whole of the proceeds of the sale to the mortgagee in payment of the mortgage debt, and provided that "under the condition whatever sum of money the mortgagor should pay to the mortgagee in a lump sum, should be credited and set off against the rent payable under the lease with interest at 8 annas per cent. per mensem." Subsequently three further charges were tacked on to the mortgage, the latest of which was dated the 13th of December, 1882. In June, 1881, the mortgagor was in arrear with his rent and the mortgagee brought a suit against him on which the mortgagor gave up possession of the property to the mortgagee. In a suit for redemption (the right to redeem not being disputed): *Held*, that the mortgagee was entitled under the terms of the mortgage to appropriate the profits of the mortgaged property in lieu of the interest on the mortgage-money not paid by

**MORTGAGE**—*contd.*

4. REDEMPTION—*contd.*

the mortgagor. Evidence of preliminary negotiations and previous conversations were not admissible to contradict or vary the terms of the mortgage (Evidence Act, s. 92). *Held*, also, that the mortgage and the lease were both parts of one and the same transaction But there was no inconsistency between the two instruments, nor would there have been any inconsistency if the mortgage itself had contained a provision for granting a lease on the terms upon which the lease was actually granted. *Held*, further, that the original mortgage having been executed before the Transfer of Property Act came into operation, that Act was not applicable, notwithstanding that one of the further charges was executed subsequently to that date. Whatever might be the construction of s. 65(*a*) of that Act (which was cited in support of the mortgagee's claim), he was not, on the evidence and under the circumstances of the present case, entitled to compensation for any loss or damage occasioned by his security being diminished owing to a portion of the mortgaged property being successfully claimed from the mortgagor. ABDULLAH KHAN *v.* BASHARAT HUSAIN (1912) . . . **I. L. R. 35 All. 48**

2. ——— *Redemption by reversioners after foreclosure decree—Subrogation—Transfer of Property Act (IV of 1882), s. 91.* While a sale in execution under a mortgage decree was in progress, plaintiff (a stranger) paid the decree amount into Court on behalf of some of the reversioners to the property. *Held*, that though the mere payment of a mortgage-debt by a stranger will not entitle him to the mortgagee's rights by by subrogation yet here under s. 91, Transfer of Property Act (IV of 1882), the reversioners became equally entitled to a charge over the property and they could validly assign this charge to the plaintiff by way of sub-mortgage. The English and Indian Law relating to the doctrine of subrogation compared and discussed *Per* SUNDARA AYYAR, *J.*—I am on the whole inclined to hold that a reversioner cannot voluntarily claim to redeem a mortgage made by the last male holder or institute a suit for that purpose. But does it necessarily follow that when a suit is instituted by a mortgagee for sale, the reversioner has not got a sufficient interest in the property to entitle him to discharge the mortgage to prevent the loss of the property to which he would be entitled to succeed on the death of the widow ? I do not think I am bound to hold that his right stand on the same footing when he claims of his own accord to redeem and when he tries to save the property for the estate upon the mortgagee attempting to sell it. The right of a person interested in the payment of money which another is bound by law to pay and who therefore pays it, to be reimbursed by the other is recognised in s. 69 of the Indian Contract Act. There is no reason for holding, that only those who have an interest in a mortgaged property within the meaning of ss. 85 and

**MORTGAGE**—*contd.*

4. REDEMPTION—*contd.*

91 of the Transfer of Property Act can be held to be interested in the payment of money due on a mortgage created by the last male owner. NARAYANA KUTTI GOUNDAN *v.* PECHIAMMAL (1913) . . . . **I. L. R. 36 Mad. 426**

3 ——— ——— *Redemption—Compromise deed executed afterwards, restricting right to redeem—Agreement, if clog on redemption.* There is nothing in law to prevent the parties to a mortgage from coming to any arrangement afterwards qualifying the right to redeem. Where the parties to a mortgage, executed in 1846, entered into a compromise in 1870 whereby the right to redeem was admitted as subsisting but was subjected to certain conditions: *Held*, that the representative of the mortgagor could not sue for redemption, when no breach was alleged of the covenants contained in the deed of compromise. SHANKAR DIN *v.* MUNSHI GOKUL PRASAD (1912) **17 C. W. N. 1**

4 ——— ——— *Redemption—Accounts—Mortgagee obstructing and prolonging litigation to keep property in possession—Interest, disallowance of, for period during which defendant prosecuted appeals to higher Courts unsuccessfully—Liability of defendants to account for rents and profits received during the period—Expenses of management, necessarily incurred—Costs of taking accounts and striking balance against redemption money—Costs of special leave application.* Where a suit for redemption of a mortgage in respect of property of which the mortgagee took and kept possession from 11th February 1864, was commenced on 30th May 1888, and a preliminary decree for accounts, etc., was passed by the Subordinate Judge on 29th June 1889, and the decree, subject to certain modifications in favour of the plaintiffs, was affirmed by the High Court on 10th September 1890, and the decree of the High Court was affirmed by the Privy Council on 27th July 1895; and the plaintiffs, having applied in the meanwhile for the taking of accounts in pursuance of the decree of the High Court, the same was taken and a final decree for redemption was passed by the Subordinate Judge on the 29th July 1902, declaring that a sum of Rs. 3,31,162-0-11 was due from the plaintiffs to the defendant at that date and decreeing that on payment into Court within six months from that date of the said sum, with interest at 12 per cent. per annum on the sum of Rs. 2,86,886 from the 29th July 1902 to the date of payment into Court within such six months, plaintiffs should have a reconveyance, free of incumbrances, of the property under mortgage, etc., and the plaintiffs appealed to the High Court and the defendants also filed cross-objections but both were dismissed by that Court, and upon appeal and cross-appeal by both parties to the Privy Council, the decree of the Subordinate Judge of 29th July 1902, was maintained by the Board's judgment, dated the 13th June 1912, but the Privy Council found that in the action the defendants had been obstructive and oppressive and they had unduly and intentionally prolonged the litigation to their own advantage and to the serious detriment of the plaintiffs: *Held*, by the Privy Council, that no further sum as interest beyond the interest on the sum of Rs 2,86,886 decreed by the Subordinate Judge for the period from 29th July 1902 to the 28th January 1903, should be allowed to the defendants in the accounts which the High Court was directed to take of the rents and profits which the defendants had received since 29th July 1902, and it was ordered that the expenses of taking such account and all procedure incident thereto and to the striking of the balance upon payment of which redemption might be made was to be borne by the defendants, that allowance should be made in taking the accounts for money, if any, necessarily spent by the defendants after the 29th July 1902, in the proper management and preservation of the mortgaged property, but no interest should be allowed on the money so spent, but that simple interest should be allowed to the plaintiffs on the balance or excess of each year's receipts over expenditure at a rate to be fixed by the High Court, and that the sum of money found to be due to the plaintiffs should be deducted by the High Court from the amount which would have been payable by the plaintiffs into Court on the 28th January 1903, if payment had been made under the decree of the Subordinate Judge of 29th July 1902, and that the plaintiffs should be allowed to redeem on payment by them into the High Court within a time to be fixed by that Court of the balance to be ascertained in the manner indicated. In the appeal and cross-appeal, the respective parties were directed to bear their own costs except those in connection with the application for special leave to cross-appeal which in accordance with the order granting such leave was to be paid by the cross-appellants. GANGA BAHU DEBI *v* APURBA KRISHNA ROY (1912) . **17 C. W. N. 25**

5. SALE OF MORTGAGED PROPERTY

1. ——— *Sale—Chota Nagpur Tenancy Act (Beng. VI of 1908), s 47—Decree for sale of property situate in Manbhum—Estoppel.* After the preliminary decree on a mortgage was passed, and before the final decree for sale was made, the Chota Nagpur Tenancy Act, 1908, was extended to Manbhum, where the mortgaged property was situate. The judgment-debtor having objected to the application of the decree-holder for sale of the said property, both Courts set aside the objection, and the sale to the decree-holder was thereafter confirmed. Upon appeal to the High Court: *Held*, that the sale was in direct contravention of the provisions of s. 47 of the Chota Nagpur Tenancy Act. *Held*, further, that the judgment-debtor cannot be estopped from bringing to the notice of the Court what the Court must be taken to know of itself, that there was a distinct

**MORTGAGE**—*contd*

5, SALE OF MORTGAGED PROPERTY—*concld*

provision of law which prevented the sale of the property LAKSHMI BIBI KUJRANI *v.* ATAL BIHARY HALDAR (1913) . . **I. L. R. 40 Calc. 534**

2 ——— *Parties—Suit for entire mortgage-money and sale of entire mortgaged property—Omission to implead certain persons interested—Decree to which plaintiffs entitled* Where a plaintiff-mortgagee sued for the recovery of the whole of the mortgage-money by the sale of the whole of the mortgaged property, but by an oversight omitted to implead certain persons who had acquired a share in the property subsequent to the mortgage in suit, it was *held*, that so much of the claim should be decreed as was proportionate to the interests of the persons who were before the Court GANESHI LAL *v.* CHARAN SINGH (1913) **I. L. R. 35 All. 247**

3 ——— *Suit for sale against auction purchaser of mortgaged property—Evidence, admissibility of—Recital of receipt of consideration—Estoppel. Held*, that an admission made by a mortgagor in a mortgage-deed and also before the registering officer as to the receipt of consideration, is admissible in evidence against the purchaser of the mortgaged property at an auction sale in execution of a simple money decree. *Bihari Lal* v. *Makhdum Bakhsh, I L. R. 35 All. 194*, followed *Manohar Singh* v *Sumirta Kuar, I. L. R 17 All. 428*, not followed *Mahomed Mozuffer Hossein* v *Kishori Mohan Roy, I. L. R. 22 Calc. 909*, referred to. *Held*, also, that a purchaser at auction of the right, title and interest of the father alone in joint family property which had been mortgaged by the father, was not entitled to raise the plea that the mortgage was made without legal necessity so long as there was time yet for the sons to challenge the purchase *Muhammad Muzamilullah Khan* v. *Mithu Lal, I. L. R 33 All. 783*, distinguished. BAKHSHI RAM *v.* LILADHAR (1913) . . **I. L. R. 35 All. 353**

6 USUFRUCTUARY MORTGAGE.

——— *Usufructuary, if implies personal covenant to pay—Suit against debtor personally on usufructuary mortgage—Limitation Act, 1877, Sch II, Art. 116.* Every loan implies a promise to repay, and an unqualified admission of indebtedness is equivalent to an express covenant and creates a personal obligation. *Kerr* v. *Ruxton, 4 C. L. J. 510*, referred to. A usufructuary mortgage providing for the repayment of the mortgage-debt with interest from the rents and profits of the mortgaged property within a specified period on the expiry of which the mortgagor is to be put in possession, while prescribing a mode of payment, does not necessarily imply that the creditor is limited to that mode alone, if it is found insufficient to satisfy the debt. There was clearly a personal obligation to pay where the document expressly provided that the debtor would be responsible for the defi-

**MORTGAGE**—*concld.*

6. USUFRUCTUARY MORTGAGE—*concld.*

ciency. *Marotam* v. *Sheo Pargash, L. R. 11 I A 83*; *I. L. R 10 Calc 740*, and *Kalka Singh* v. *Paras Ram, L. R 22 I. A. 68, I. L R 22 Calc 434*, distinguished *Parbati Charan* v *Govinda Chandra, 4 C. L. J 246*, referred to. A suit to recover from the debtor personally money due on a registered mortgage-bond, is a suit for compensation for the breach of a contract in writing registered within the meaning of Art 116 of Sch II of the Limitation Act *Kerr* v. *Ruxton, 4 C. L. J 510*, relied on. *Nobo Coomar* v. *Siru Mullick, I. L R 6 Calc. 94*, and *Husain Ali* v. *Hafez Ali, I. L. R. 3 All. 600*, referred to. *Held*, on a construction of the document, that the present case fell within the second division of Art 116 of Sch. II of the Limitation Act Where the mortgage-bond provided that a specified sum would be paid out of the income of certain properties at prescribed times towards the satisfaction of the debt, but the document gave the debtor seven years' time altogether for the re-payment of his loan: *Held*, that it could not be held upon a construction of the document as a whole that whenever the mortgagee found it impossible to collect the sums mentioned at the appointed time, there was a breach of contract and that time ran from the date of each successive breach The intention was that the liabilities of the parties should be adjusted on the expiry of the term, and time ran from that date RAM NARAIN SINGH *v* ODINDRA NATH MUKERJEE (1911) . . . . **17 C. W. N. 369**

**MORTGAGE-DECREE.**

*See* DAMDUPAT, RULE OF.
**I. L. R. 40 Calc. 710**

*See* EXECUTION OF DECREE.
**I L R 40 Calc. 704**

——— *Mortgage decree, if also money-decree and if decree-holder may be allowed to execute against other property before exhausting security—Civil Procedure Code, 1908, s. 73, O. XXXIV, rr. 5, 6, and O. XXI, rr. 10, 12, 13—Transfer of Property Act (IV of 1882), s 90.* Where the holder of a mortgage-decree applied to Court for an order to be allowed to execute the mortgage-decree as a money-decree by attachment of some other property or for the passing of a supplemental decree for the purpose, but at the same time reserving his rights under the mortgage-decree, on his giving an undertaking not to take any steps as against the mortgaged property till he has exhausted the other property: *Held*, that such an order could not be made having regard to O. XXXIV, rr. 5 and 6 of the Code of Civil Procedure. *Hart* v. *Tara Prasanna Mukerjee, I. L. R. 11 Calc. 718*, commented on A decree passed in a mortgage suit and directing the realization of the decretal amount from the mortgaged property and, if insufficient, from the defendant personally, is a mortgage-decree and not a money-decree *Fasil Howladar* v. *Krishna Bandhoo Roy, I. L. R. 25 Calc. 580, Lal Behary Singha* v. *Habibu Raah-*

**MORTGAGE-DECREE**—*concld.*

*man, I. L. R. 26 Calc 166, Kartick Nath Pandey* v. *Juggernath Ram Marwari, I L. R 27 Calc. 285,* referred to. A person who has taken a mortgage-decree should not be allowed to treat it as a money-decree and to execute the decree against other properties without exhausting his remedies in respect of the security under his decree. It is only after sale of the mortgage security that a decree for the balance due on the mortgage may be given, if it was recoverable from the mortgagor personally and his other property and the decree may be executed as an ordinary money-decree. *Gopal Das* v. *Ali Mohammed, I L. R. 10 All. 632, Ram Ranjan Chakrabartty* v *Indra Narain Das, 10 C. W. N. 862, I. L R. 33 Calc. 890,* referred to. SURJA KUMAR KARFORMA *v.* PRAMADA SUNDAREE DEBI (1913) . **17 C. W. N. 1039**

**MORTGAGE IN FRAUD OF CREDITORS.**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 53 . **I. L. R. 36 Mad. 29**

**MORTGAGE OR SALE.**

———*Deed of sale with condition of repurchase, if mortgage—Extraneous circumstances if and when may be referred to to determine nature of deed—Mortgage transaction—Limitation Act (IX of 1908), Art. 134—Perpetuity, rule against, whether applicable* *B* executed in favour of *A* a deed of out-and-out sale with a condition of repurchase of a house but no date was fixed for repurchase. On the same date *B* executed a *kabuliyat* in favour of *A* by which he accepted a lease of the house sold. The Court took into consideration how the language of the document was related to the existing facts such as that the vendor continued in possession, paid rent at the usual rate of interest, etc., and, further, that the value of the property was much more than the consideration paid: *Held,* that these are legitimate materials on which a Court is entitled to say that the transaction was a mortgage, and in so doing the Court does not infringe the provisions of s. 92 of the Evidence Act or disregard anything laid down in *Balkishen Das* v. *Legge, I. L. R. 22 All. 149.* A mortgagee's right to redeem is exempt from the operation of the rule against prepetuity. SHAZADI BIBI *v.* SHEIKH JAMAL (1913) **17 C. W. N. 1053**

**MORTGAGEE.**

——— purchase by—

*See* SALE FOR ARREARS OF REVENUE. **I. L. R. 40 Calc. 89**

**MUAFIDAR.**

——— mortgage by—

*See* N.-W. P. AND OUDH LAND REVENUE ACT (XIX OF 1873), SS. 146, 148, 167. **I. L. R. 35 All. 190**

**MUNICIPAL BOARD.**

*See* N.-W. P. AND OUDH MUNICIPALITIES ACT (XV OF 1883), S 10. **I. L. R. 35 All. 308**

**MUNICIPAL BOARD**—*concld*

*See* U P MUNICIPALITIES ACT (I OF 1900), S. 128 (*h*) (*i*). **I. L. R 35 All. 24**

——— powers of—

*See* UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900), S 88. **I. L. R. 35 All. 375**

**MUNICIPAL CORPORATION.**

——— *Chairman—General Committee—Building plans, refusal of sanction of —Calcutta Municipal Act (Beng III of 1899), ss 375, 377—Action for mandamus or damages whether maintainable—Specific Relief Act (I of 1877), s. 45.* Where plans for building have been rejected by the Chairman and the General Committee of the Calcutta Municipal Corporation, no suit is maintainable to have the plans approved or for damages If the Chairman and General Committee have acted honestly and within their authority, their decision cannot be reviewed by any Court. If the plans have been rejected *mala fide* the only remedy is by an application under s. 45 of the Specific Relief Act, for an order to compel the Chairman and the General Committee to hear the matter in the manner provided by law. *Davis* v *Bromley Corporation, [1908] 1 K B. 170,* and *Smith* v. *Chorley Rural Council, [1897] 1 Q. B. 678,* followed. *London and North Western Railway* v. *Westminster Corporation, [1904] 1 Ch 759,* referred to. PROSAD CHUNDER DE *v.* CORPORATION OF CALCUTTA (1913) **I. L. R. 40 Calc. 836**

**MUNICIPAL ELECTION.**

*See* UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900), S. 187 **I. L. R. 35 All. 450**

——— invalidity of—

*See* RIGHT OF SUIT. **I. L. R. 36 Mad. 120**

——— rules for regulation of—

*See* U P MUNICIPALITIES ACT (I OF 1900), S. 187 . **I. L. R. 35 All. 578**

**MUNICIPALITY.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195 **I. L. R. 37 Bom 365**

——— sale by—

*See* RIGHT OF SUIT. **I. L. R. 36 Mad. 373**

**MURDER.**

*See* PENAL CODE (ACT XLV OF 1860), SS. 37, 302, 304 **I. L. R. 35 All. 506, 560**

*See* PENAL CODE (ACT XLV OF 1860), SS. 300, 325 **I. L. R. 35 All. 329**

**MUTAWALLI.**

*See* WAKF . **I. L. R. 37 Bom. 447**

# N

## NAIKINS.

——————— *Adoption—Adoption* of *daughter by a Naikin—Adoption invalid—Will—Construction—Gift to the adopted daughter as persona designata.* One Sundra, a *naikin* (a professional prostitute), adopted her near relative Hira as her daughter. She next made a will whereby she bequeathed the bulk of her property to Hira. In the will, Hira was referred to at some places by her name and at others as "adopted daughter." On Sundra's death, Hira claimed Sundra's property as her adopted daughter and also as *persona designata* under Sundra's will: *Held*, that Hira could not succeed as an adopted daughter, because Sundra, being a *naikin*, could not validly adopt a daughter to herself. *Mathura Naikin* v. *Esu Naikin*, *I. L. R. 4 Bom. 545*, followed. *Venku* v. *Mahalinga*, *I. L. R. 11 Mad. 393*, dissented from. *Held*, further, on construction of the will, that Hira was entitled to succeed as *persona designata* under Sundra's will, for Hira was not to take the property as being the adopted daughter, but she was the adopted daughter and was to take the property because she was the special object of Sundra's bounty HIRA NAIKIN *v.* RADHA NAIKIN (1912) . **I. L. R. 37 Bom. 116**

## NECESSITY.

*See* HINDU LAW—ALIENATION, **I. L. R. 40 Calc. 288**

## NEGLIGENCE.

*See* CARRIERS . **I. L. R. 40 Calc. 716**

*See* CONTRIBUTORY NEGLIGENCE. **I. L. R. 37 Bom. 575**

*See* RAILWAY . **I. L. R. 37 Bom. 1**

## NEGOTIABLE INSTRUMENT.

1. ——————— *in favour of A as agent of B—Endorsement by A, simpliciter in C—No primâ facie title to* C. If a negotiable instrument executed in favour of "*A*, as the agent of *B*" is endorsed by *A*, *simpliciter* (*i.e.*, without describing himself as the agent of *B*) to *C*, the endorsement cannot, in the absence of any evidence to show that *A* was intended to be the beneficial owner of the note, convey, in this country, any title to *C* so as to enable *C* to sue the person or persons liable on the note. *Muthar Sahib Maraikar* v. *Kadir Sahib Maraikar*, *I L R. 28 Mad 244*, referred to. VEERAIYAN CHETTIAR *v.* PONNUSWAMI CHETTIAR (1913) . . . . **I. L. R. 36 Mad. 362**

2. ——————— *In favour of several—Discharge by one of several payees, validity of. Held*, by the Full Bench (THE CHIEF JUSTICE dissenting), that one of several payees of a negotiable instrument could give a valid discharge of the entire debt without the concurrence of the other payees. ANNAPURNAMMA *v.* AKKAYYA, 1913. **I. L. R. 36 Mad. 544**

## NIMAK SAYAR.

——————— *Permanent Settlement—Separate grants of zamindari and Nimak Sayar over the same village, rights which pass under—Right of grantee of Nimak Sayar to enter on land of zemindari for working saltpetre—Right of lessees and licensees of grantee—Reasonable exercise of right—Cujus est solum ejus est usque ad cœlum et ad inferos, doctrine of, application in India—Plaint, amendment of—exclusive right to dig saltpetre misunderstood and wrongly described in plaint as a monopoly.* The zemindari in village Manpura was settled on the predecessors-in-title of the defendant at the Permanent Settlement and at the same Settlement the *Nimak Sayar Mehal* in the said and other villages (*i.e.*, an exclusive right to collect nitrous earth from the lands in those villages with a view to extracting saltpetre therefrom) was settled by Government on the plaintiff's predecessor. The plaintiff urged that the grant of the *Nimak Sayar Mehal* entitled her to enter on the land comprised in defendant's zemindari and exercise therein in a reasonable manner the rights vested in her under the grant, whilst the defendant, a recent purchaser of the zemindari right, contended that the grant in question conferred on the plaintiff the right to collect the revenue only if and when saltpetre happend to be manufactured, and that she had no right to come on the land except by the leave and license of the defendant much less to authorise others to utilize the nitrous soil for the collection of saltpetre: *Held*, that what passed under the grant of the *Nimak Sayar Mehal* were not rights of this precarious character. That the *Nimak Sayar Mehal* was no part of the assets of the zemindari, and that the zemindari and the *Nimak Sayar Mehal* were separately settled by the Government, as it was open to it to do, in disregard of the doctrine of English real property *cujus est solum ejus est usque ad cœlum et ad inferos*. *Gooroo Pershad Bose* v. *Bishnu Charan Heyra*, 1 Sel Rep. 337 (Old Ed) 1811, and *Bygnauth* v. *Deen Dyal*, 2 Sel. Rep. 133, referred to. *The Bengal Government* v. *Nawab Zafar Husain Khan*, 5 Moo I. A. 457, distinguished. That the grant of the *Nimak Sayar Mehal* carried with it the means reasonably necessary for its enjoyment. *Prerogative of Saltpetre*, 12 Coke Rep. 12, referred to. That by virtue of plaintiff's rights as owner of the *Nimak Sayar Mehal*, she, her agents, servants and workmen, lessees and licensees were entitled to enter on the land of the village and to exercise an exclusive right to dig for saltpetre, but so that this be done with as little inconvenience and prejudice as possible to the defendant as the owner of the village and that the ground be made and left as commodious to the defendant as it was before. Plaintiff whose claim of exclusive right to work saltpetre was erroneously described in the plaint as a monopoly, was allowed in Second Appeal to amend her plaint and formulate her claim in happier and more precise language. As the plaint in its original form occasioned the prolongation of the suit the plaintiff, though successful, was ordered to pay costs throughout. GOLAP CHAND *v.* JANKI KUAR (1913) . . **17 C. W. N. 1195**

## NOLLE PROSEQUI.

*See* JURISDICTION OF CRIMINAL COURT—FRESH PROCEEDINGS. I. L. R. 40 Calc. 71

## NON-JOINDER.

*See* MORTGAGE . I. L. R. 35 All. 247

## NON-JOINDER OF PARTIES.

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1. I. L. R. 35 All. 484

## NON-OCCUPANCY RAIYATS.

*See* EJECTMENT I. L. R. 40 Calc. 858

## NORTH-WESTERN PROVINCES AND OUDH ACTS.

——— 1867—III.

*See* PUBLIC GAMBLING ACT.

——— 1869—I.

*See* OUDH ESTATES ACT

——— 1873—XIX.

*See* NORTH-WESTERN PROVINCES AND OUDH LAND REVENUE ACT.

——— 1883—XV.

*See* NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT.

——— 1900—I.

*See* UNITED PROVINCES MUNICIPALITIES ACT.

——— 1901—II.

*See* AGRA TENANCY ACT.

——— 1901—III.

*See* UNITED PROVINCES LAND REVENUE ACT.

——— 1910—IV.

*See* UNITED PROVINCES EXCISE ACT.

## NORTH-WESTERN PROVINCES AND OUDH LAND REVENUE ACT (XIX OF 1873)

——— ss. 146, 148, 167—

——— "*Proprietor*" —

*Mortgage by muafidar—Sale of mahal for default in payment of Government Revenue—Rights of purchaser and mortgagees of muafi.* Where certain *muafidars*, whose rights as such accrued before the year 1870, and were not shown to have been created by the zamindars of the *mahal* in which the *muafi* land in question was situate, executed a usufructuary mortgage of such land, and thereafter the *mahal* was sold for default in payment of Government revenue, it was *held* that the rights of the mortgagees were not extinguished in favour of the purchaser. KUNWAR SEN *v.* JWALA PRASAD (1913) . . . I. L. R. 35 All. 190

## NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT (XV OF 1883).

——— s. 10—

——— *United Provinces Municipalities Act (I of 1900), s. 187—Municipal Board—Election—Suit to set aside election—Jurisdiction of Civil Court—Limitation Act (IX of 1908), Sch. 1, Art. 120. Held,* that an order of the Government directing that a particular municipal election held in the year 1911 should be conducted according to certain rules passed in 1884, and not according to the rules passed *in pari materiâ* in 1910, which superseded those of 1884, was *ultra vires*, and that inasmuch as the rules of 1884 did not apply and the election was not held under the rules of 1910, a suit would lie in a civil Court to contest the election, irrespective of anything contained in either set of rules, the period of limitation applicable to which was that prescribed by Art. 120 of the first Schedule to the Indian Limitation Act, 1908. *Gur Charan Das v. Har Sarup, I. L. R. 34 All. 391,* referred to. RAGHUNANDAN PRASAD *v.* SHEO PRASAD (1913) I. L. R. 35 All. 308

## NOTICE.

*See* CIVIL PROCEDURE CODE, 1908, S. 80. I. L. R. 37 Bom. 243

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, R. 89. I. L. R. 37 Bom. 387

*See* CRIMINAL PROCEDURE CODE, SS 203, 437 . . . I. L. R. 35 All. 78

*See* PROCESSION . I. L. R. 40 Calc. 470

1. ——— *Secretary of State for India in Council, suit against—Notice by two out of sixty-three joint owners of land—Sufficiency of notice—Waiver—Estoppel—Objection taken at a late stage, if permissible—Civil Procedure Code (Act V of 1908), s. 80.* Under s. 80 of the Code of Civil Procedure it is essential that the notice should state the names, descriptions and places of residence of all the plaintiffs. Where a suit was brought by sixty-three plaintiffs against the Secretary of State for India in Council and others, and the notice of the suit contained the names, descriptions and places of residence of two out of the sixty-three plaintiffs. *Held,* that such a notice was insufficient and did not fulfil the requirements of the statute. *The Secretary of State for India* v. *Perumal Pillai, I. L. R. 24 Mad 279,* and *Manindra Chandra Nundi* v. *The Secretary of State for India, 5 C. L. J. 148,* referred to. It is competent to the Secretary of State to waive the notice, and he may be estopped by his conduct from pleading the want of notice at a late stage of the case: *Manindra Chandra Nundi* v. *The Secretary of State for India, 5 C. L. J. 148,* referred to. Where the written statement contained an objection as to the validity of the notice, but no objection was taken by the Secretary of State at any stage of the trial to its omission and it was the second defendant who prayed, just before the trial began, that an additional issue might be raised on this question:

**NOTICE**—*concld.*

*Held*, that it was not competent to the second defendant to raise this question BHOLA NATH ROY *v.* SECRETARY OF STATE FOR INDIA (1912) **I. L. R. 40 Calc. 503**

2. ——— *Search in the Registry office, failure to discover at—Misdirection as to evidence—Second Appeal—Finding of fact—Error of law.* Where the question was whether a purchaser for valuable consideration had notice, at the date of his purchase, of a registered instrument, dated the 25th Bhadra 1300, when it was found that he, before the purchase, had caused a search to be made by his agent of the books in the Registry Office extending to the year 1300 in which the document was entered, and the agent had stated that he did not find the document in the book; and where upon these facts the District Judge held that he had no notice of the registered instrument: *Held*, that there was a presumption of notice of the contents of the book and it could not be rebutted by the mere statement that though a search was made it was unsuccessful. *Held*, further, that although the question at issue was in essence a question of fact, yet the District Judge having misdirected himself in regard to the most important part of the evidence bearing upon the question and having approached the consideration of that evidence from a wrong standpoint, had committed an error of law. *Bushell* v. *Bushell*, *1 Sch. & Lef 90*; *9 R. R. 21*, *Hodgson* v. *Dean*, *2 Sim St. 221*; *25 R. R. 188*, *Procter* v. *Cooper*, *2 Drew*, referred to. AKHOY KUMARI DEBI *v.* KANAI LAL KUNDU (1912) . . **17 C. W. N. 224**

**NOTICE OF EXECUTION.**

*See* EXECUTION OF DECREE.
**I. L. R. 40 Calc. 45**

**NOVATION.**

*See* PARTNERSHIP.
**I. L. R. 37 Bom. 158**

## O

**OATH.**

*See* UNITED PROVINCES EXCISE ACT (IV OF 1910), S. 60 . **I. L. R. 35 All. 575**

**OATHS ACT (X OF 1873).**

*See* RES JUDICATA.
**I. L. R. 36 Mad. 287**

——— **s. 13.**

*See* UNITED PROVINCES EXCISE ACT (IV OF 1910), S. 60. **I. L. R. 35 All. 575**

**OCCUPANCY HOLDING.**

*See* AGRA TENANCY ACT (II OF 1901), SS. 11 *et seq.* **I. L. R. 35 All. 474**

*See* AGRA TENANCY ACT (II OF 1901), S. 20 . . **I. L. R. 35 All. 405**

*See* AGRA TENANCY ACT (II OF 1901), SS. 79 AND 95 . **I. L. R. 35 All. 299**

**OCCUPANCY HOLDING**—*contd.*

*See* CIVIL AND REVENUE COURTS
**I. L. R. 35 All. 464**

1. ——— *Mortgage taken by landlord, if evidence of transferability—Assignment of mortgage by landlord to another, effect of—Assignment to purchaser of holding, if recognition of the purchaser's tenancy.* The fact of a landlord himself taking a mortgage of a non-transferable holding is by itself no evidence of its transferability. Where, however, the landlord allowed a purchaser of the holding to take an assignment of his mortgage from him: *Held*, that he was stopped from denying that the purchaser had acquired a valid title by his purchase A mere assignment of the mortgage by the landlord to a third person by itself would not amount to anything more than a representation that the mortgage was valid and could be enforced against the *jote*. MAHESH NARAIN ROY *v.* MAHARAJA BAHADUR SINGH (1912) **17 C. W. N. 70**

2. ——— *Transfer—Acceptance of rent from transferee—Recognition of validity of transfer—Pleader, scope of authority of.* The acceptance of rent from the transferee of a non-transferable occupancy holding, not as transferee but as the agent or representative of the original tenant, does not amount to a recognition of the validity of the transfer. *Khoodeeram Chatterjee* v. *Rukhinee Boistobee*, *15 W. R. 197*, *Gour Lal* v *Rameshwar*, *6 B. L. R. App. 92*, *Wilson* v *Radhadulari*, *2 C. W. N. 63*, *Rasamoy Purkait* v. *Srinath Moyra*, *7 C. W. N. 132*, relied on. *Kurani Dasi* v. *Sajoni Kant*, *12 C. W. N. 539*, referred to. *Baroda Churn Dutt* v. *Hemlata Dasi*, *13 C. W. N. 833*, *Thomas Barslay* v. *Hossein Ali Khan*, *6 C. L. J. 601*, *Naba Kumari* v. *Behary Lal*, *11 C. W. N. 865*: *I. L. R. 34 Calc. 902*, distinguished. DIGBIJOY ROY *v.* ATA RAHMAN (1911) **17 C. W. N. 156**

3. ——— *Transfer contrary to local usage of portion of holding, if constitutes forfeiture of tenancy—Surrender of portion of holding—Landlord's right to re-enter that portion—Encumbrance created prior to surrender, effect of.* Where the entire holding of an occupancy raiyat has not been transferred contrary to local usage and custom, it cannot be said that there has been a forfeiture of the tenancy. *Rai Kamaleswari Persad Singh Bahadur* v. *Maharaja Harbullabh Narain Singh Bahadur*, *2 C. L. J. 369*, followed. Where a raiyat surrenders a portion of his holding to the landlord, the landlord is entitled to re-enter the portion notwithstanding any subordinate rights which the raiyat may have created upon the particular portion, and the mere fact that the landlord was aware of the encumbrance created by the raiyat, cannot take away his right of re-entry. *Badan Chandra Das* v. *Rajeswari Debya*, *2 C. L. J. 570*, and *Rajendra Kishore Adhikari* v. *Chandra Nath Dutta*, *12 C. W. N. 878*, referred to. GAGAN CHANDRA CHOUDRY *v.* ALAK CHAND SAHA (1913) . . **17 C. W. N. 698**

**OCCUPANCY HOLDING—*concld.***

4. ——— *Abandonment if question of fact—Usufructuary mortgage—Raiyat if necessary party in suit to recover from transferee.* Where an occupancy raiyat mortgaged his non-transferable occupancy holding by way of an usufructuary mortgage for a certain number of years and the mortgagees continued in possession of the land through their *burgadar* even after the expiry of the term, and the lower Appellate Court found that the raiyat did not live in the village and had cut off connection with the holding: *Held*, that these findings amounted to holding that the raiyat had abandoned the jama. The mere execution of an usufructuary mortgage might not be sufficient to establish abandonment; whether there has been abandonment of a holding or not is principally a question of fact. The conditions prescribed by s. 87 of the Bengal Tenancy Act do not preclude a landlord from entering upon a land abandoned by tenant. The raiyat was not a necessary party to a suit to recover a non-transferable holding from the transferees thereof, nor would he be bound by the decree in the suit. MONOHAR PAL *v.* ANANTA MOYEE DASSEE (1913) . . **17 C. W. N. 802**

5. ——— *Transfer of portion without landlord's consent—Surrender by original raiyat to landlord—Landlord if may eject transferee—Abandonment.* After the sale by an occupancy raiyat of a portion of his holding, the raiyat may surrender that portion or the whole of the holding to his landlord, and s. 87, cl (7) of the Bengal Tenancy Act is no bar to the landlord accepting the surrender, as the interest, if any, of the transferee which the landlord is not bound to recognise, is not an incumbrance. Upon such surrender, the landlord may sue to eject the transferee as a trespasser. *Kabil Sardar* v. *Chandra Nath, I. L. R. 20 Calc. 590*, distinguished. The remedy of the transferee, if any, is against his vendor. RAMONI MOHAN RAY *v.* SHEIKH KALIMUDDI (1912) . . . **17 C. W. N. 1101**

6. ——— *Transfer by tenant of whole—Landlord's right to eject transferee—Disclaimer by original tenant if must be proved—Original tenant if necessary party—Custom of transferability—Nazar, payment of.* In order to entitle a landlord to eject a transferee of the whole of a non-transferable raiyati holding, it is not necessary for him to prove as a fact that the rayat has left the holding and disclaims any interest in it. It is a direct inference from the fact that he has sold the entire holding and given possession of it to the purchaser and distinct repudiation or refusal to pay rent need not be proved. Unless the *nazar* is fixed by custom, the landlord is not bound to recognise a transfer upon payment of *nazar*. *Bazlul Karim* v. *Satish Chandra Giri, 15 C. W. N. 752, 756*, referred to. In a suit by the landlord to eject a transferee of a non-transferable holding the transferor is not a necessary party. CHAND PRAMANIK *v.* ROMONY MOHAN RAY (1912) **17 C. W. N. 1105**

**OCCUPANCY TENANT.**

*See* KHOTI SETTLEMENT ACT (BOM. I OF 1880), SS. 33 (*c*), 40 (*a*), RR. I, III, VIII. . . **I. L. R. 37 Bom. 284**

**OFFICER IN THE ARMY.**

——— **salary of—**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60, CL. (2) (*b*). **I. L. R. 37 Bom. 26**

**OFFICIAL ASSIGNEE.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 80 . **I. L. R. 37 Bom. 243**

——— **duties and rights of—**

*See* SALE OF GOODS. **I. L. R. 40 Calc. 523**

——— **title of—**

*See* INSOLVENCY **I. L. R. 40 Calc. 78**

**OMISSION.**

*See* CHARGE . **I. L. R. 40 Calc. 168**

——— **to serve notice—**

*See* EXECUTION OF DECREE. **I. L. R. 40 Calc. 45**

**ONUS OF PROOF.**

*See* BURDEN OF PROOF.

*See* CARRIERS . **I. L. R. 40 Calc. 716**

*See* EXECUTOR, SALE BY. **I. L. R. 36 Mad. 575**

*See* RAILWAY . . **I. L. R. 37 Bom. 1**

**ORAL PROMISE.**

*See* EVIDENCE ACT (I OF 1872), S. 92. **I. L. R. 36 Mad. 19**

**ORPHAN.**

——— **adoption of—**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 18 . . **I. L. R. 37 Bom. 513**

**OSTENSIBLE MEANS OF SUBSISTENCE.**

——— *Conducting the play of "ring" game—Criminal Procedure Code (Act V of 1898), s. 109.* The conducting of the "ring" game is an ostensible means of subsistence within the meaning of s. 109 of the Criminal Procedure Code. *Hari Sing* v. *King-Emperor, 6 C. L. J. 708*, referred to. BANGALI SHAH *v.* EMPEROR (1913) . . . . **I. L. R. 40 Calc. 702**

**OUDH ESTATES ACT (I OF 1869).**

——— **ss. 2, 3, 8, 10, 22—**

——— *Summary and regular settlements of Oudh—Villages settled on grantee whose name was entered as owner in Lists 1 and 2 of those prepared under s. 8—"Talukdar"—"Estate" under s. 2—Impartible property—Kabuliat executed by grantee after the time-limit specified in s. 3—Suit for partition—After acquired properties held to be partible, there being no intention shown to incorporate them with the impartible property.* At the summary

**OUDH ESTATES ACT (I OF 1869)**—*concld.*

——— **ss. 2, 3, 8, 10, 22**—*concld.*

settlement of Oudh, an order was made on the 5th of October, 1859, for the settlement of certain villages with the ancestor of the parties to these appeals who, however, did not execute his *kabuliat* until the 13th of October, 1859, and so not within the time-limit specified in s 3 of the Oudh Estates Act (I of 1869), namely, "between the 1st of April, 1858, and the 10th of October, 1859" At the regular settlement, shortly afterwards, the grantee recovered decrees for possession of other villages and subsequently acquired other properties by purchase. In respect of all the settled villages his name was entered in Lists 1 and 2 prepared under the statutory provisions of s. 8 of the Act. In a suit for partition to which the defence was that all the property was impartible · *Held*, (affirming the decisions of the Courts in India), that the grantee (the defendant) was on the construction of the provisions of Act I of 1869 relating thereto, a "talukdar," and the villages so settled with him formed, within the meaning of the Act, an "estate" which was impartible and descendible to a single heir. On a question whether the delay in executing the *kabuliat* deprived the taluqa of the character of an "estate" defined in s. 2 of the Act, the Judges of the Judicial Commissioner's Court differed in opinion. *Held*, in the absence of an express declaration that non-execution within the time specified would be fatal to the right given to the grantee by s. 3, that no such construction could be put on that section; but the execution of the *kabuliat* related back to the date of the settlement, namely, the 5th of October 1859. As to the after-acquired properties the defendant contended that by the custom of the family they became part of the original estate and were therefore not subject to the ordinary Hindu law of inheritance: *Held*, (affirming the decisions of both the Courts below), that the evidence was insufficient to establish that custom; that no intention of the taluqdar was shown to incorporate the subsequently acquired properties with the taluqa, as was necessary on the authority of the case of *Parbati Kumari Debi* v. *Jagadis Chandra Dhabal*, *I. L. R. 29 Calc. 433*, *453*; *L. R. 29 I. A. 82*, *98*, and that the plaintiff was therefore entitled to a decree for his share (one-half) of such properties as being partible JANKI PRASAD SINGH *v.* DWARKA PRASAD SINGH (1913) . . . . **I. L. R. 35 All 391**

**OWNERSHIP.**

——— **entry of, in record-of-rights.**

*See* MAHOMEDAN LAW—ENDOWMENT.
**I. L. R. 40 Calc. 297**

## P

**PANJAB LAND REVENUE ACT (XVII OF 1887).**

——— **s. 44—**

*See* MAHOMEDAN LAW—ENDOWMENT.
**I. L. R. 40 Calc. 297**

**PARDON—**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 337, CL. (*3*).
**I. L. R. 37 Bom. 146**

**PARLIAMENT, MEMBER OF.**

——— *Making contract with Secretary of State for India in Council, if forfeits seat—Public service, for or on account of which such contract made, if comprises public service of the Crown anywhere—Place where such contract made if material—22 Geo III, c. 45 (1782), s. 1—41 Geo III, c 52 (1801), s. 4—Secretary of State for India, if a British Officer and if may discharge duties of His Majesty's other Secretaries of State—21 & 22 Vict., c. 106, Government of India Act, 1858, s 65—Secretary of State in Council, if a corporation or a legal personality—3 & 4 Will. IV, c 41. Judicial Committee Act, 1833, s. 4—Construction of Statute ejusdem generis, later Act if a surplusage or ex abundante cautelâ.* Sir Stuart Samuel, being a member of the House of Commons was partner of a firm which made contracts with the Secretary of State for India in Council for borrowing money on short loans, for purchasing India Council Bills and India Treasury Bills, for subscribing to India Government loans, and for purchasing silver for the purposes of the Indian currency: *Held*, that Sir Stuart Samuel forfeited his seat in the House of Commons, the contract having been made for the public service of the Crown in India and with one of His Majesty's Secretaries of State. S. 1 of 22 Geo. III, c. 45, must be taken to extend to such service and to the Secretary of State for India. The public service required by the Statute need not be one either executed or required within Great Britain or paid for out of any particular fund. The Secretary of State for India is in the fullest sense an officer of British Government. A contract is none the less made with the Secretary of State for India that he has to obtain the concurrence of his Council before making it and that he and his Council are designated by s. 65 of the Government of India Act of 1858 (21 & 22 Vict., c. 105) as liable to be sued or to sue on it as a corporate body. Neither the personality of the Secretary of State nor that of his Council is merged in any Corporation by the Statute. Their responsibilities and duties thereunder are separate and sometimes conflicting, and it is only for purposes of litigation that they can be treated as though they were but one legal personality. *In the matter of* SIR STUART SAMUEL (1913) . . . . . **17 C. W. N. 735**

**PARTIAL DECREE.**

*See* REFUND OF COURT-FEE.
**I. L. R. 40 Calc. 365**

**PARTIES.**

*See* BOOKS OF REFERENCE.
**I. L. R. 40 Calc. 898**

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 1; O. I, R. 9
**I. L. R. 35 All. 441**

*See* FRAUD . **I. L. R. 37 Bom. 217**

**PARTIES**—*concld.*

*See* MORTGAGE . **I. L. R. 35 All. 247**

*See* VENDOR AND PURCHASER. **I. L. R. 35 All. 273**

——— **array of**—

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52 . **I. L. R. 37 Bom. 427**

——— **change of, in pending litigation**—

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52 . **I. L. R. 37 Bom. 427**

——— **joinder of**—

*See* HINDU LAW—JOINT FAMILY. **I. L. R. 37 Bom. 340**

——— *Religious Endowment—Suit against the sole surviving member of the committee and the superintendent of a temple—Death of the sole surviving member—Substitution of the adopted son—New committee added as party—Cause of action, abatement of—Civil Procedure Code (Act V of 1908), O XLI, r. 20, O. XXII, r. 10; O I, r. 10; Religious Endowments Act (XX of 1863), s. 14.* A suit, brought against the sole surviving members of a committee of management appointed under s 3 of the Religious Endowments Act, 1863, and against the superintendent of a temple, for their removal from the committee and from the office of superintendent, respectively, was dismissed by the District Judge. Pending the appeal, the 1st defendant died, and his adopted son was brought on the record as a party by the plaintiffs. Subsequently, a new committee was appointed and added also as a party, and the appeal was proceeded with against the adopted son, the superintendent and the new committee: *Held*, that the relief against the 1st defendant was purely personal, and that the cause of action did not survive against his adopted son. *Held*, also, that the members of the new committee should not have been added as parties respondents. *Kashi* v. *Sadasiv Sakharam Shet, I L R 21 Bom. 229*, referred to. *Held*, further, that the suit could not be maintained as against the 2nd defendant alone, and that the appeal, as now constituted, was incompetent. BHIMA ROUT *v.* DASARATHI DASS (1912) . . **I. L. R. 40 Calc. 323**

**PARTITION.**

*See* CIVIL PROCEDURE CODE, 1908, S. 47 **I. L. R. 35 All. 243**

*See* CIVIL PROCEDURE CODE, 1908, O. XX, R. 18 **I L. R. 35 All. 159**

*See* HINDU LAW—JOINT FAMILY. **I. L. R. 35 All. 543**

*See* HINDU LAW—PARTITION. **I. L. R. 35 All. 41, 337**

*See* PARTITION ACT (IV OF 1893).

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52. **I. L. R. 37 Bom. 427**

**PARTITION**—*contd.*

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901) SS. 107, 111. **I L. R. 35 All. 527**

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS. 107, 111, 112. **I. L. R. 35 All. 548**

*See* UNITED PROVINCES LAND REVENUE ACT (III OF 1901), SS 111, 112, 233(*k*). **I. L. R. 35 All. 126**

——— **suit for**—

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S 11 . **I. L. R. 37 Bom. 307**

*See* HINDU LAW—ALIENATION **I. L. R. 40 Calc. 966**

1. ——— *Consideration—Bonâ fide claim for separate allotment for marriages of one brother's daughters—Agreement at or before partition to allot—Execution of promissory notes by each brother for his share of the amount—Previous suit for partition—Subsequent suit on promissory note—S 43, Civil Procedure Code (Act XIV of 1882), no bar—Causes of action distinct.* An agreement made between parties to a partition, by which one brother was to pay money for the marriages of his brothers' daughters, whether it is made before the partition and subsequently embodied in the deed of partition or made at the time of partition, is a enforceable contract, as the agreement by the father of the daughters to other terms of the partition is sufficient consideration. A claim at the time of partition for the allotment of a separate sum of money out of the general funds for the performance of marriages of the daughters of one of the brothers to a partition, is not altogether unfounded according to Hindu law Even otherwise an agreement so to allot would be binding on the persons agreeing as one of the terms of a *bonâ fide* compromise constituting a settlement between the members of a family, if there was a *bonâ fide* claim for the same at the time of partition. If an agreement so to pay a certain sum made by the other brothers at the time of partition becomes split up into various agreements by the execution of separate promissory notes by the other brothers, each for his share, the obligation to pay the amounts of the promissory notes is distinct from the obligation to observe the other terms of the partition; so that a suit first brought for partition against all the brothers (s. 43, Civil Procedure Code, Act XIV of 1882), does not bar the institution of a subsequent suit for the sum due from one of the brothers under the promissory note. "Cause of action," meaning of, explained. *Nanu* v *Raman, I. L. R. 16 Mad. 335, Sesha Ayyar* v. *Krishna Ayyangar, I. L. R. 24 Mad. 96, Umed Dholchand* v. *Pir Sahib Jiva Miya, I. L. R. 7 Bom. 134, Sundar Singh* v. *Bholu, I. L. R. 20 All. 322*, and *Moro Raghunath* v *Balaji Trimbak, I. L. R. 13 Bom. 45*, followed. *Appasami* v. *Ramasami, I. L. R. 9 Mad. 279*, and *Shanmugam Pillai* v. *Syed Gulam Ghose, I. L. R. 27 Mad. 116*, distinguished. *Preonath Mukerji* v. *Bishnath Prasad, I. L. R. 29 All. 256*, dissented from.

**PARTITION**—*contd.*

*Per* CURIAM · If several promissory notes are executed for portions of the same debt, each promissory note creates a cause of action, and this would be so even if it be assumed that a suit might be instituted for the whole debt on the original cause of action. ANANTANARAYANA IYER *v.* SAVITHRI AMMAL (1913) . . **I. L. R. 36 Mad. 151**

2. ——— *Partition, suit for—Misjoinder of causes of action and parties—Prejudice—Res judicata amongst co-defendants—Civil Procedure Code (Act V of 1908), s. 11.* A suit for partition determines the shares of the co-sharers amongst themselves, and each co-sharer, whether plaintiff or defendant, demanding a separate block for himself may prove his share and get a block for himself. Where the causes of action in respect of different items of property, the subject-matter of a suit for partition, appeared to be different, and the parties concerned in the claim to one such item appeared to be less numerous than those concerned in the claim for the other item, the joining of them in one suit caused misjoinder of parties and causes of action. But such misjoinder of causes of action and parties did not entitle the appellant (who raised this point in his written statement) to have the decree set aside, particularly as the misjoinder had not prejudiced him, and as, if the two separate suits had been brought on the separate causes of action, they would probably have had to be tried together. Where a co-sharer of the present plaintiff had sued to have his title declared to a taluk and the plaintiff and the defendant appellant had been made co-defendants, and the decision was that there had been a binding private partition confining the interests of each co-sharer to the allotment received by his or her predecessor and that that was not merely an informal division for convenience of possession. *Held*, that, though the question of a previous partition was one which not only might and ought to have been, but actually was made the ground of defence in the former suit within the meaning of s 11, Expln IV, Civil Procedure Code, and though the present plaintiff was acting in that suit in the same interest as her cousin, it was impossible to hold that in the suit in which she and the appellants were co-defendants there was a conflict of interest between them, and that the judgment defined their rights and obligation *inter se*. The case accordingly did not come under the rule relating to *res judicata* among the defendants as laid down in *Gurdeo Singh* v. *Chandrika Singh, I. L. R. 36 Calc. 193.* SARODA PROSAD ROY CHAUDHURY *v.* KAILASH BASHINI GUHA (1912) **17 C. W. N. 128**

3. ——— *Partition amongst co-owners—Leasehold interest purchased in execution, allotted to one co-owner—Tenancy of the others, if subsists—Bengal Tenancy Act (VIII of 1885), s. 12—Registration and notice, if necessary.* Where, upon partition amongst co-owners, a share of a taluk purchased in execution on behalf of all the co-owners fell into the share of one of them. *Held*, that the liability of the other co-owners to pay rent to the landlord of the taluk ceased. *Prosunna Coomar Singha* v. *Ram Coomar Ghose, I. L. R. 16 Calc. 640, R. D. Mehta* v. *Godadhar Rai, I. L. R. 37 Calc. 683 : 14 C. W. N. 83, Promatha nath* v. *Kalli Prasanna, I. L. R. 28 Calc. 744,* referred to. S. 12 of the Bengal Tenancy Act, the operation of which is confined to transfers by sale, gift, or mortgage, does not apply to a case of transfer by partition which does not therefore require to be registered and notified as contemplated by s. 12. RAMDHONE DHUR *v.* SARUP CHANDRA SEN (1912) **17 C. W. N. 313**

**PARTITION**—*concld.*

**PARTITION ACT (IV OF 1893).**

——— **ss. 1, 2, 3**—*Partition—Mortgagee rights in a revenue paying mahal—Application for sale by owners of less than a moiety—United Provinces Land Revenue Act (III of 1901), s. 107.* Mortgagee rights merely in a revenue-paying mahal do not fall within the purview of the United Provinces Land Revenue Act, 1901, for the purposes of partition: consequently the provisions of the Partition Act, 1893, apply to the partition amongst co-owners of such rights. But an order for sale of the mortgagee rights under s. 2 of the Partition Act will not be valid unless based upon the request of a party or parties interested to the extent of one moiety or upwards. BANKE LAL *v.* SHANTI PRASAD (1913) **I. L. R. 35 All. 387**

**PARTNER.**

——— liability of—

*See* TRADE-MARK.
**I. L. R. 40 Calc. 814**

**PARTNERSHIP.**

*See* ABKARI ACT (BOM. V OF 1878), SS. 16, 43 . **I. L. R. 37 Bom. 320**

——— *Fresh agreement—Novation—Suit for an account on the footing of continuance of original partnership—Suit not maintainable.* A testator appointed his widow as the guardian of his minor children and executrix (by tenor) of his will. On his death the widow consented to the retention of the testator's share in a partnership business by the surviving partners and subsequently to a transfer of the same to another business. In an action brought by one of the testator's sons as administrator against the surviving partners for an account of all the assets of the testator at the time of his death retained, and employed by the defendants in their business. *Held*, dismissing the suit, that the testator's widow was perfectly competent as his executrix to enter into the arrangement, which was a *novatio*, with the surviving partners so as to bind the estate, and the suit against the partners on the footing of a continuance of the original partnership was not maintainable. JAMSETJI NASSARWANJI *v.* HIRJIBHAI NAOROJI (1912) **I. L. R. 37 Bom. 158**

## PARTNERSHIP ACCOUNT.

——— suit for—

*See* LIMITATION ACT (XV OF 1877).
I. L. R. 36 Mad. 185

## PATILKI VATAN.

*See* VATAN . I. L. R. 37 Bom. 81

## PATTA.

——— *Suit to enforce acceptance of—Zamindari land converted into wet with Government water—Consideration, failure of—Enhancement—Rent Recovery Act (VIII of 1865), s. 11.* Certain dry zamidari lands were converted into wet by the use of water from a channel constructed and maintained solely by Government. *Held,* that there was no consideration for the zamindar to levy enhanced rent notwithstanding a stipulation for enhancement, should the land be cultivated as wet. The conditions laid down in the Rent Recovery Act (Mad VIII of 1865), s. 11, not being present, the zamindar was precluded from levying enhanced rent. SRIMATU RAJAH MALLIKARJUNA PRASADA NAIDU *v* SUBBAYYA (1913) . . . I L. R. 36 Mad. 4

## PENAL CODE (ACT XLV OF 1860).

——— ss. 37, 302, 304.

1. ——— **Murder**—*Culpable homicide not amounting to murder—Fatal assault with lathis by three persons acting in concert.* Three persons, brothers, attacked with *lathis* a fourth, against whom they bore a grudge, and beat him with great severity, so that he died shortly afterwards. His skull was badly fractured, and numerous other injuries were inflicted upon him. It did not appear which injuries were caused by which of the assailants, but the evidence showed that they were acting in concert and intended to cause such bodily injury as was likely to cause death. *Held,* that all three assailants were guilty of murder. *King-Emperor* v. *Subbappa Chunnappa, 15 Bom. L. R. 303,* and *King-Emperor* v *Kanhai I. L R 35 All 329,* followed. *Emperor* v. *Bhola Singh, I L. R 29 All 282, Queen-Empress* v. *Duma Baidya, I L. R 19 Mad 483, Gouridas Namasudra* v *Emperor, I L R 36 Calc 659, Empress* v *Dharam Rai, All Weekly Notes, (1887), 236, Dhian Singh* v *King-Emperor, 9 All. L J 180,* distinguished. EMPEROR *v.* RAM NEWAZ (1913) I. L. R. 35 All. 506

2. ——— ——— *Murder—Culpable homicide not amounting to murder—Fatal assault with lathis by several persons acting in concert.* Five men—members of the same family—assaulted an unarmed man and beat him with their *lathis.* They knocked him down and continued beating him, with the result that he died then and there. Another man, who came to the rescue of the first, was also knocked down and beaten by the same five men with a similar result. *Held,* that all five men were in each case guilty of the offence of murder. *Dhian Singh* v. *King-Emperor, 9 All. L. J 180,* dissented from. EMPEROR *v.* HANUMAN (1913)
I. L. R. 35 All. 560

——— s. 90—*'Consent' obtained on misrepresentation, illegal—Penal Code (Act XLV of 1860), s. 366—Kidnapping a girl with such consent obtained from guardian.* The offence of kidnapping consists in taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of such guardian. If a minor is taken with the consent of the guardian and subsequently married improperly without the consent of the guardian to any person, such improper marriage would not by itself amount to kidnapping. A consent given on a misrepresentation of a fact is one given under a misconception of fact within the meaning of s. 90, Indian Penal Code, and as such is not useful as a consent under the Penal Code. A misrepresentation as to intention of a person (in stating the purpose for which the consent is asked) is a misrepresentation of a "fact" within the meaning of s. 3 of the Evidence Act. *Per* CURIAM: Equally useless as a defence is a consent obtained by a fraud or coercion. *R* v. *Hopkins, Car. & Mar. 254,* followed. *Re* JALADU (1913)
I L. R. 36 Mad. 453

——— ss. 141, 143, 148, 326—*Rioting—Maintaining a right, lawful common object—'Enforcing a right,' meaning of.* The complainant's party without the permission of the petitioners constructed a dam across a pyne exclusively belonging to the petitioners who had obtained an injunction from the Civil Court restraining the complainant's party from interfering with the petitioners in their use and occupation of the pyne. The petitioners in attempting to cut the dam were opposed by the complainant's party two of whom were struck by the petitioners, and the petitioners were convicted of rioting and of causing grievous hurt. *Held,* that after the Civil Court decree and injunction the petitioners could not be held to be enforcing a right within the meaning of s. 141 (*4*) and the presence of the complainant's party in opposing the petitioners, was a criminal trespass which entitled the petitioners to a right of private defence. The phrase 'to enforce a right' can only apply when the party claiming the right has not possession over the subject of the right and therein lies the distinction between 'enforcing a right' and 'maintaining a right' A party in possession is entitled to resist and repel an aggression and his action in so doing would be in the maintenance of his right. RAMNANDAN PROSAD SINGH *v.* THE EMPEROR (1913)
17 C W. N. 1132

——— s 146—*Rioting—Dispute regarding possession of land—Title with accused—Lawful common object—Propriety of conviction—Right by private defence—Hurt* Where the petitioners were convicted under ss 148, 323, 326, 329-149, Penal

**PENAL CODE (ACT XLV OF 1860)—** *contd.*

**——— s. 146—***concld.*

Code, some under one, some under all of the sections, the riot relating to a dispute in respect of possession of a plot of land, and the Sessions Judge in appeal found that the occurence did take place on the land in dispute and the accused took part in it, but that they were in fact entitled to harvest and remove the crops grown on the disputed land, but the District Magistrate in his explanation pointed out that the findings of the Judge were not in accordance with the weight of the evidence, the High Court refused to go behind the findings of the Sessions Judge, and *held* that the conviction under ss. 148, 326-149, Penal Code, could not stand; and so far as the offence under s. 323 was concerned the accused did not in the circumstances of the case exceed their right of private defence. JHALKU TEWARI *v.* KING-EMPEROR (1913) **17 C. W. N. 1081**

**——— ss. 146, 147—**

*See* JURY, TRIAL BY **I. L. R. 40 Calc. 367**

**——— s. 147—**

*See* ATTACHMENT. **I. L. R. 40 Calc. 849**

**——— ss. 147, 323—**

*See* CUMULATIVE SENTENCES **I. L. R. 40 Calc. 511**

**——— s. 155**—*Person not having property in land nor claiming interest therein if liable — Record of riot-case if admissible.* Where the petitioners were convicted under s. 155, Penal Code, and they had admittedly no property in the land in respect of which the riot took place, but their mother and the wife of one of them had interest therein, and the Sessions Judge in appeal relying on the evidence that the petitioners demanded *kabuliyats* from tenants, found that they were claiming an interest in the land although there was no evidence to prove that the petitioners demanded the *kabuliyats* for themselves: *Held*, that the finding that the petitioners were claiming an interest in the land could not be supported and the conviction under s 155, Penal Code, must be set aside. That in the case under s. 155, Penal Code, the Magistrate should have excluded the record of the riot case. PRAMOTHA NATH RAY CHOWDRY *v.* KING-EMPEROR (1913) **17 C. W. N. 1247**

**——— ss. 182, 211—**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 403 (*1*). **I. L. R. 36 Mad. 308**

**——— ss. 182, 193**—*Complaint—Statement made to the Magistrate as head of the police and not as a magistrate.* *P* appeared before a District Magistrate and made a statement in which he accused a certain police officer of having beaten him, demanded a bribe of him, and locked him up

**PENAL CODE (ACT XLV OF 1860)—** *contd.*

**——— ss. 182, 193—***concld.*

in the police *howalat*. He stated, however, that he did not wish to make a complaint, but only desired that an inquiry should be made. Nevertheless the Magistrate examined *P* on oath, and subsequently, the charge having been found to be baseless, *P* was convicted under ss 182 and 193 of the Indian Penal Code. *Held*, that inasmuch as *P* had expressly stated that he did not wish to make a complaint, the statement must be taken to have been made to the District Magistrate not as Magistrate, but as head of the district police and the conviction, under s. 193 of the Code could not be upheld. EMPEROR v. PHULEL (1912) . . **I. L. R. 35 All. 102**

**——— s. 188**—*Order duly promulgated by public servant—Order forbidding persons to enter railway premises except for travelling. Held*, that the public have a right to enter upon railway premises for many purposes other than travelling, and an order forbidding persons to enter a railway station except for *bonâ fide* purposes of travelling would be an illegal order. In the particular instance, however, it did not appear that the order in question was issued by any authority which, supposing it to be otherwise legal, would have had power to issue it. EMPEROR *v.* RAMA (1913) **I. L. R. 35 All. 136**

**——— ss. 193, 471—**

*See* SANCTION FOR PROSECUTION. **I. L. R. 40 Calc. 584**

**——— ss. 193, 511**—*Court—District Judge hearing election petition under s. 22 of the Bombay District Municipalities Act (Bom. Act III of 1901) is a Court—False evidence before the District Judge —Sanction for prosecution—Criminal Procedure Code (Act V of 1898), s. 195.* A District Judge hearing an election petition under the provisions of s. 22 of the Bombay District Municipalities Act (Bombay Act III of 1901), is a "Court" within the meaning of s. 195, cl. (*b*) of the Criminal Procedure Code, 1898. No prosecution for attempting to fabricate false evidence (ss. 193 and 511 of the Indian Penal Code) before the District Judge can be instituted without having obtained sanction as required by s. 195 of the Criminal Procedure Code, 1898. *Raghubuns Sahoy* v. *Kokil Singh, I. L. R. 17 Calc. 872*, followed. *In re* NANCHAND SHIVCHAND (1912) **I. L. R. 37 Bom. 365**

**——— s. 199**—*Sanction to prosecute—Prosecution based on alleged false declaration—Declaration inadmissible in evidence.* A declaration, before it can be made the foundation of a prosecution under s. 199 of the Indian Penal Code, must be one which is admissible in evidence and which the Court before which it is filed is bound or authorized by law to receive in evidence. EMPEROR *v.* RAM PRASAD. (1912) **I. L. R. 35 All. 58**

**PENAL CODE (ACT XLV OF 1860)**—*contd.*

——— **s. 211**—

*See* COMPLAINT, DISMISSAL OF
**I. L. R. 40 Calc. 444**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 250.
**I. L. R. 37 Bom. 376**

*See* JURISDICTION OF CRIMINAL COURT
**I. L. R. 40 Calc. 360**

——— **ss. 213, 214**—*Screening offence—Restitution of property for screening offence—The offence screened must be shown to have been committed before the screening could be punished.* *G* gave certain jewellery to *M* by way of *jangad*. *M* pledged the same with *S* under circumstances which constituted such pledging an offence of criminal breach of trust The jewellery was later returned by *S* to *G* on the latter undertaking not to prosecute *M* for the offence of criminal breach of trust. *M* was tried for the offence of criminal breach of trust with regard to the jewellery and was acquitted. *S* and *G* were next tried for offences under ss. 213 and 214 of the Indian Penal Code, in that they offered and took restitution of property in consideration of screening an offence. The trying Magistrate convicted them of the offences charged, holding that for the purposes of their case *M* must be deemed to be guilty of the offence of criminal breach of trust. On appeal: *Held*, acquitting the accused, that they could not be convicted of screening of the offence of criminal breach of trust, when the offence of criminal breach of trust had not been proved. *Held*, also, that under the circumstances the trying Magistrate was bound to proceed on the footing that no criminal breach of trust had been committed. EMPEROR *v.* SANALAL LALLUBHAI (1913)
**I L. R. 37 Bom. 658**

——— **s 224**—*Village Chowkidar if a police-officer—Escape from custody—Abetment.* A Chowkidar cannot be properly regarded as a police-officer within the terms of s. 59, Criminal Procedure Code, and escape from his custody is not an offence under s. 224, Penal Code. PURNA CHANDRA KUNDU *v.* HACHANALI CHOWKIDAR . **17 C. W. N. 978**

——— **s. 297**—

*See* GRAVE-YARD.
**I. L. R. 40 Calc. 548**

——— **ss. 300, 325**—*Murder—Grievous hurt—Common intention—Deadly assault with* lathis *on an unarmed person—Presumption.* Four persons armed with *lathis* attacked and severely beat a fifth, who was unarmed, over a dispute about irrigation. The person attacked died in consequence of this beating, and it was found that he had received several severe blows on the head, the result of which was that the bones of the skull were broken to pieces, and also other injuries about the body, most of the injuries having probably been inflicted whilst the person attacked was on the ground; but the evidence did not disclose which of the assailants caused which of the injuries. *Held*, that all four assailants were properly convicted of murder under the fourth clause of s. 300 of the Indian Penal Code, and that the inference was not justified that the common intention of the assailants was not more than the causing of grievous hurt. EMPEROR *v.* KANHAI (1912) . . **I. L. R. 35 All. 329**

**PENAL CODE (ACT XLV OF 1860)**—*contd.*

——— **s. 300**—*concld.*

——— **s 379**—

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 397, 123.
**I. L. R 37 Bom. 178**

——— **s. 406**—

*See* CRIMINAL PROCEDURE CODE, S. 179.
**I. L. R 35 All. 29**

——— **ss. 406, 408**—*Criminal breach of trust—Water works inspector misappropriating water—Money realized as water-tax not credited to the municipality.* Where a municipal water works inspector, being the lessor of a house within municipal limits, had such house connected with a municipal water main and accepted a yearly payment as water-tax from his tenants, but neither informed the municipal board that the connection had been made, nor credited to the board the money which he received as water-tax from his tenants, it was *held* that he was properly convicted under ss. 406 and 408 of the Indian Penal Code, whether or not he might have been punishable under the United Provinces Water Works Act, 1891. EMPEROR *v.* BIMALA CHARAN ROY (1913) . . . . **I. L. R. 35 All. 361**

——— **ss. 408, 477A**—

*See* CHARGE . **I. L. R. 40 Calc. 318**

——— **s. 411**—

*See* DISHONESTLY RECEIVING STOLEN PROPERTY . **I. L. R. 40 Calc. 990**

——— **ss. 411, 414**—*Dishonestly receiving stolen property—Assisting in the concealment of stolen property—Government currency note, received in the course of business—Jurisdiction.* Where a Government currency note of the value of Rs. 1,000 was traced seven months after the loss to a shroff who carried on business in Bombay and through whose hands currency notes would find their way in the course of business, though he could not name the person from whom he had received the currency note · *Held*, on a complaint under ss. 411, 414 of the Indian Penal Code, that the Chief Presidency Magistrate was right in refusing to issue process. RAM CHANDRA SAHA *v.* HAJI MEAH HAJI ABDULLAH (1913)
**17 C. W. N. 1129**

——— **ss. 415, 417**—*Attempt to cheat—Dishonest intention—Facts proved not sufficient to support conviction—Evidence gone into in revision.* Where according to the Rules regulating the levy of octroi on certain goods brought within the Sam-

**PENAL CODE (ACT XLV OF 1860)** —*contd.*

——— **ss. 415, 417**—*concld*

balpur Municipality, the goods had to be presented in bulk at the exit station out-post with an application for a pass in a prescribed form, such application being in the ordinary course handed by the applicant or his agent to the out-post mohurer who made it over to the daroga whose duty it was to check the application and to certify the description and quantity of the goods actually presented and then to make out the *chalan* or pass which had to be signed by the mohurer, and one of the Rules provided that a municipal member must attest the check at the exit station out-post and in the absence of such attestation the exit mohurer shall not sign the *chalan*, and another Rule provided that the absence of the mohurer's signature on the *chalan* is one of the reasons for which an application for a refund of duty allowed in certain cases should be rejected; and where on a certain day the petitioner at the request of the daroga consented to act as Municipal member at the out-post in respect of goods brought there to be passed through and among such goods brought to the out-post were some cartloads of goods belonging to the petitioner's firm, and in the application for a pass in respect of these goods which was not signed by the petitioner himself but in which his name was written by a gomasta (which application according to the case for the prosecution the petitioner himself handed to the daroga with whom he was in collusion), the goods were entered as 460 bags of linseed and 40 bags of rice but as a matter of fact only 230 bags of linseed were actually brought to the out-post and according to the evidence of the daroga the petitioner assured him that he would make good the deficiency on the following day; and it was found that the petitioner was cognisant of the application, of the details therein entered and of the number of bags brought to and passed through the out-post but the petitioner did not attest the check in respect of his own goods and did not attempt to induce the mohurer to sign the chalan (which the mohurer in fact did never sign), nor did he do anything further to carry out the purpose imputed to him, and made no attempt to obtain a receipt for 500 bags as representing the number actually passed through the out-post, and on the next day when he tried to send goods to the railway station some of his carts were intercepted and prevented from reaching the railway station by the municipal authorities. *Held*, that the facts proved were not sufficient to support the conviction of the petitioner for an offence of cheating. The evidence on the record fell short of the evidence required to prove dishonest mind or dishonest purpose on the part of the petitioner. BIRJRAJ MARWARI *v.* THE KING-EMPEROR (1912) . . . **17 C. W. N. 294**

——— **ss. 457, 511**—*House-breaking—Attempt—Burglars digging a hole in a wall but not boring it through owing to interruption by third persons.* The accused dug a hole in the wall of the complainant's dwelling house, during the night,

**PENAL CODE (ACT XLV OF 1860)**—*contd.*

——— **ss. 457, 511**—*concld.*

with intent to complete that hole in order to make their entry into the house through it; and, having so entered, to commit a theft in the house. In fact, the hole was not completed in the sense that it did not completely penetrate from one side of the wall to the other, as the accused were interrupted before they could complete it. The accused were on these facts convicted by the trying Magistrate of the offence of attempting to commit house-breaking by night. On appeal, the Sessions Judge reversed the conviction and acquitted the accused on the ground that the accused's acts did not amount to an attempt to commit house-breaking, but only to a preparation. The Government of Bombay having appealed against the order of acquittal: *Held*, setting aside the order of acquittal, that the accused's acts did in law amount to an attempt, for the actual transaction, the distinct overt act, was begun and carried through to a certain point but was not completed by reason of the accused's being interrupted EMPEROR *v.* CHANDKHA SALABATKHA (1913)

**I. L. R. 37 Bom. 553**

——— **ss. 463, 467**—*Forgery—Forgery committed to conceal fraud already committed.* A Kulkarni misappropriated certain moneys which the *rayats* had paid to him as irrigation cesses. Some time afterwards, he forged certain receipts purporting to come from the Government treasury for those moneys, with the object of concealing the misappropriation. The accused helped the Kulkarni in the forgery, by forging the signatures on the receipts He was paid Rs. 25 for the work. The accused was, on these facts, charged with the offence of forgery. The Sessions Judge acquitted the accused on the ground that s 463 of the Indian Penal Code penalised the making of a false document, only if it was made (*inter alia*) "with intent to commit fraud or that fraud may be committed," whereas no such intent could be ascribed where the fraud had already been fully committed. The Government of Bombay appealed against the order of acquittal: *Held*, setting aside the order of acquittal, that the accused had committed forgery, although it was effected in order to conceal an already completed fraud. *Lolit Mohan Sarkar* v. *Queen-Empress*, *I. L. R. 22 Calc. 313*, *Emperor* v. *Rash Behari Das*, *I. L. R. 35 Calc. 450* and *Queen-Empress* v. *Sabapati*, *I L R 11 Mad. 411* followed. *Empress of India* v. *Jiwanand*, *I. L. R. 5 All. 221*, *Empress* v. *Mazhar Hussain*, *I. L. R 5 All. 553*, and *Queen-Empress* v *Girdhari Lal*, *I. L. R. 8 All. 653*, dissented from. EMPEROR *v.* BALKRISHNA WAMAN (1913)

**I. L. R. 37 Bom. 666**

——— ——— **ss. 463, 471**—"*Using*," *definition of—Criminal Procedure Code (Act V of 1898), ss. 17 and 531—Jurisdiction —Commitment to Court, not possessing jurisdiction, bad—Transfer.* A forged document was produced in Court in obedience to an order of the Court *Held*, that the production did not amount to using the document

**PENAL CODE (ACT XLV OF 1860)—** *contd.*

**——— ss. 463, 471—***concld.*

as genuine. An involuntary production of a document in Court cannot be said to amount to a use of it. The expression "using a document" is apparently used in the sense of its being put forward in some way for one of the purposes mentioned in s. 463, Indian Penal Code. Although by virtue of s. 531, Criminal Procedure Code, an order in an inquiry made by a Magistrate not having local jurisdiction, will not be set aside unless there is in fact a failure of justice, yet when a committal is made by such a Magistrate to a Court of Session which has no jurisdiction to try the case under s 177, Criminal Procedure Code, such commitment is illegal The High Court has no power to transfer a case thus committed to a Court not having jurisdiction to another Court having jurisdiction. The commitment must be quashed. ASSISTANT SESSIONS JUDGE, NORTH ARCOT *v.* RAMAMMAL (1913)

**I L. R. 36 Mad. 387**

**——— ss. 464, 465, 467—***Criminal Procedure Code (Act V of 1898), ss. 221, 222, 223, 342—Making a false document—Forgery of valuable security—Falsification of part of a document which is surplusage—Evidence—Onus—Defect in charge—Omission to set out intention in charge* Where the accused was convicted of having forged a kabuliat executed by himself in favour of his landlord *C. B* whose name appeared on the document as a witness and there were two other witnesses to the document, and it was admitted that the accused who was an illiterate man did not "make the false document" himself, and it was not established that the intention of the accused was to fraudulently bind the landlord by his alleged signature as witness, and the case for the defence was that it was not the landlord *C. B.* who signed the name as witness but another person of the same name, and the Sessions Judge held that the onus was on the defence of showing that this *C. B*, whose name appeared on the document, was a real person and signed the deed, and where the Sub-Registrar who registered the document and held an enquiry in connection therewith and saw with his own eyes that the accused was in possession of the land covered by the document gave evidence of that fact, but the Sessions Judge held that his statement was not evidence *Held*, that a charge of forgery cannot lie against a person who was not the writer of the forged document or who did not sign the forged name Making a false document is one thing and causing a false document to be made is another One is an offence under s 465, Penal Code, the other is an act, at most, of abetment. The part of a document in order to come within the definition of false document must be dishonestly or fraudulently made, signed, sealed, or executed by the person who is charged, and it must be made with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, and executed

**PENAL CODE (ACT XLV OF 1860)—** *contd.*

**——— ss. 464, 465, 467—***concld.*

by or by the authority of a person by whom or by whose authority, he knows that it was not made, signed, sealed or executed. Even supposing that part of a document is false that part must have some material effect on the transaction. A mere surplusage would not invalidate a document. In the present case even admitting that the name of *C. B.* was a fictitious name it would not make the document a false document There being two other witnesses to the document besides C B., it could have no effect on the validity of the document whether this name was or was not fictitious. If it was the intention of the accused that the document should be used in future as evidence that the landlord himself was a witness to it that might bring the case within the definition of fabricating false evidence for the purpose of being used in a judicial proceeding, or it might be a preparation for the offence of cheating but certainly does not amount to forgery. *Held*, further, that the Sessions Judge was wrong in throwing the onus on the defence and in holding that the statement of the Sub-Registrar was not evidence. HAIDAR ALI PRADHANIA *v.* THE EMPEROR (1912)

**17 C. W. N. 354**

**——— s. 471—***"Using," definition of.* The mere production of a document in obedience to the sommons of a Court cannot amount to "using" within the meaning of s. 471, Indian Penal Code. *Assistant Sessions Judge, North Arcot v Ramammal, I. L. R 36 Mad 387*, followed. Where a document having been produced upon an order of the Court the witness gives false evidence regarding it, such giving of false evidence cannot by itself be considered a fraudulent user of the document within the meaning of s. 471, Indian Penal Code A mere statement that a document is genuine does not amount to using it as genuine. *Re* MUTHIAH CHETTY (1913)

**I. L. R. 36 Mad. 392**

**——— ss. 471, 474—***Whether convictions under, can stand together—Forgery—User, whether mere filing in Court—Guilty knowledge, presumption of, if rises from mere filing of a document, being interested in establishing its contents* The mere fact that a litigant is interested in establishing the contents of a forged document filed by him in support of his case, does not raise the presumption that he filed it knowing it to be forged Where, however, the accused filed a forged document in support of his case but when the forgery was discoverd he fled away without prosecuting his case and without attempting to offer any explanation · *Held*, that his conduct was not consistent with his innocence and want of guilty knowledge The filing of a forged document as the basis of a plaint or as a necessary sequel to the pleas in the plaint, constitutes an user of it within s. 471, Penal Code, and it is incumbent on the person using it to show that he filed the document in all good faith believing it to be genuine *Ambica Prasad Singh* v. *Emperor, I. L. R.*

**PENAL CODE (ACT XLV OF 1860)**—*concld.*

——— **s. 471, 474**—*concld.*

*35 Calc. 820*, referred to and explained. Convictions of offences under ss. 471 and 474, Penal Code, in respect of the same document cannot stand together. The two offences must be charged in the alternative. *Queen* v. *Nuzur Ali*, *6 N W. P. 39*, followed. MOBARAK ALI *v.* THE KING-EMPEROR (1912) . . . . . **17 C. W. N. 94**

——— **ss. 482, 485, 486**—

*See* TRADE-MARK **I. L. R. 40 Calc. 281**

——— **s. 499**—

*See* DEFAMATION.

**I. L. R. 40 Calc. 433**

——— *Defamation—Absolute privilege, doctrine of, applicable under s. 499—Accused, statement of, in course of judicial proceedings.* A person charged with an offence was, on his trial, asked by the Magistrate what he had to say and in reply made a statement defamatory of one of the prosecution witnesses: *Held*, that the statement was absolutely privileged and that he was not liable to be punished in respect thereof for an offence under s. 499, Indian Penal Code. Although the English doctrine of absolute privilege is not expressly recognized in the section it does not necessarily follow that it was the intention of the Legislature to exclude its application from the law of this country. *In re* VENKATA REDDY (1913) **I. L. R. 36 Mad. 216**

**PENALTY.**

*See* COMPANIES ACT (VI OF 1882) S. 74 **I. L. R. 35 All. 173**

*See* CONTRACT ACT, S. 74. **I. L. R. 36 Mad. 229**

**PENSIONS ACT (XXIII OF 1871).**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 9, SCH. II, S. 20. **I. L. R. 37 Bom. 442**

——— **s. 4**—*Collector—Certificate of Collector—Civil Court—Jurisdiction—Suit for declaration for share in cash allowance—Deshpande Kulkarni Vatan.* The plaintiffs sued for a declaration that they were owners of a share in the Deshpande Kulkarni Vatan which consisted of a cash allowance paid annually from the Government Treasury They did not produce a certificate from the Collector as required by s 4 of the Pensions Act (XXIII of 1871). *Held*, that the suit in the absence of a certificate from the Collector could not be entertained in a Civil Court owing to the provisions of s 4 of the Pensions Act, 1871, inasmuch as the suit was clearly one relating to a pension or grant of money conferred by the British Government. *Babaji Hari* v. *Rajaram Ballal, I. L. R. 1 Bom. 75*, followed. *Govind Sitaram* v. *Bapuji Mahadeo, I. L. R. 18 Bom. 516*, distinguished. DWARKANATH AMRIT *v.* MAHADEO BALKRISHNA (1912) . **I. L. R. 37 Bom. 91**

**PENSIONS ACT (XXIII OF 1871)**—*concld.*

——— **s 4 (iii)**—*No distinct grant of land revenue—Section, no bar—Hereditary Village Offices Act (Madras Act III of 1895), s 21, in "any claim to recover emoluments of an office," meaning of—Regulation VI of 1831—No jurisdiction for Revenue Courts to decide what are emoluments or to decree possession—Res judicata.* S 4 of the Pensions Act (XXIII of 1871) is a bar to a civil suit only where the Court is able to hold that there was distinct grant of the land revenue itself, and where there is nothing to show that in the hands of Government before the grant of the *inam*, the land was treated as liable for the payment of land-revenue or that the Government intended to split up its ownership into *melvaram* and *kudivaram* or to make a distinct grant of the land-revenue, s 4 of the Pensions Act cannot have any application with reference to a suit for the recovery of such land alleged to have been granted as *inam*. *Her Highness Mathu Sri Jeejamba Bai Sahib* v. *Secretary of State* (*Appeal No. 10 of 1908*) explained and followed. The words "any claim to recover the emoluments of an office." The Madras Hereditary Village Offices Act (Madras Act III of 1895), s. 21 can only mean a claim to recover what in fact are the emoluments of an office or possibly what are claimed by the plaintiff to be the emoluments of an office, and cannot by any rule of construction be extended to include a claim to recover what the plaintiff denies to be the emoluments of an office but what the defendant alleges to be such emoluments. *Kasiram Narasimhulu* v. *Narasimhulu Patnaidu, I. L. R. 30 Mad. 126*, explained and distinguished. Under Madras Regulation VI of 1831, which was repealed by Madras Act III of 1895, the Revenue Courts had no jurisdiction to decide what were the emoluments of an office or to declare possession against a person alleged to be a trespasser Hence neither s 21 of Act III of 1895 nor Regulation VI of 1831 is bar to the suit. *Ravutha Koundan* v. *Muthu Koundan, I. L. R. 13 Mad 41*, referred to. Therefore a decision under the Regulation VI of 1831 cannot operate as *res judicata* with reference to a suit for lands in a civil Court. SECRETARY OF STATE *v.* SUBBARAYUDU (1913) . **I. L. R. 36 Mad. 559**

**PERJURY.**

——— *Sanction for prosecution—Criminal Procedure Code (Act V of 1898), s. 195—Conditional sanction.* A sanction to prosecute for perjury given under s 195, Criminal Procedure Code, cannot be conditional. *Re* MUNEYYA (1913) **I. L. R. 36 Mad. 471**

**PERPETUITIES.**

*See* WILL . **I. L. R. 40 Calc. 192**

**PERSONAL DECREE.**

*See* CHARGE . **I. L. R. 36 Mad. 493**

**PERSONA DESIGNATA.**

*See* NAIKINS . **I. L. R. 37 Bom. 116**

**PERSONAL LIABILITY.**

*See* FOREIGN JUDGMENT.
**I. L. R. 36 Mad. 414**

**PETROLEUM.**

——— *Keeping in possession a quantity exceeding the maximum allowed by law—Liability of a licensee for the acts of his servant or agent in the absence of finding of guilty knowledge on his own part—Petroleum Act (VIII of 1899), ss. 11 and 15 (a).* A licensee is not, in the absence of a finding by the Court that he knew that more than 500 gallons of petroleum were being transported at one time on his license, and that he allowed the same to take place with such knowledge by his servant, criminally liable, under ss. 11 and 15(a) of the Indian Petroleum Act (VIII of 1899), for the acts of the latter done in contravention of the law. Though the Act provides a personal penalty, the only person that can be punished is the one who keeps petroleum, or carries it about or puts more than 500 gallons at one place. GANPAT RAI *v.* EMPEROR (1912)
**I. L. R. 40 Calc. 356**

**PETROLEUM ACT (VIII OF 1899).**

——— **ss. 11, 15(*a*)—**
*See* PETROLEUM **I. L. R. 40 Calc. 356**

**PILGRIM-BUSINESS.**

——— **profits from—**
*See* RECEIVER **I. L. R. 40 Calc. 678**

**PLAINT.**

——— **amendment of—**
*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. VI, R. 17.
**I. L. R. 36 Mad. 378**

——— **rejection of—**
*See* COURT-FEE **I. L. R. 40 Calc. 615**

**PLANTERS' LABOUR ACT (MAD. I OF 1903).**

——— **ss. 24, 35**—*Imprisonment for refusal to perform contract, extent of.* Prosecutions and punishments under the Planters' Labour Act (Madras Act I of 1903) cannot continue indefinitely. Only two terms of imprisonment may be awarded . once under s 24 and again once under s. 35. The refusal of a *maistry* or a labourer under s. 35 to perform his contract cannot be treated as a temporary refusal. *Re* PANGA MAISTRY (1913) **I. L. R. 36 Mad. 497**

**PLEADER.**

*See* BOMBAY REGULATION II OF 1827, S. 56 . . **I. L. R. 37 Bom. 354**

——— *If can compromise suit unless authorised by client—Scope of authority of.* Although a pleader has no power to compromise a suit unless he is specially authorised in that behalf, he can bind his client by an

**PLEADER**—*concld.*

admission upon a question of fact, provided that such question falls within the scope of the suit in which he has been retained. *Bhutnath* v. *Ramlal, 6 C. W. N. 82, Jagapati* v. *Ekambarn, I. L. R. 21 Mad. 274,* followed. *Kower Narain* v *Sreenath, 9 W. R 485, Rajunder* v. *Bijai Govind, 2 Moo. I. A. 253, Hinga Lal* v. *Mansa Ram, I. L. R. 18 All. 384, Venkata Nara Simha* v. *Bhasaya Karlu, I. L. R. 22 Mad. 538, Nando Lal* v. *Nistaram, I. L. R. 27 Calc. 428, Swinfu* v. *Chelmsford, 1 F. & F. 619; 27 L. J. Ex. 382,* referred to. DIGBIJOY RAY *v.* SHAIKH ATA RAHAMAN (1911)
**17 C. W. N. 156**

**PLEADER'S FEES.**

*See* BOMBAY REGULATION II OF 1827 S 52 **I. L. R. 37 Bom. 303**

**PLEADERSHIP EXAMINATION**

——— *Pleadership Examination—Candidate—Examiners—Specific Relief Act (I of 1877), ss. 45, 46— Mandamus—Discretion.* In making an application under s. 45 of the Specific Relief Act, the provisions of s. 46 must be strictly observed, and in dealing with such an application the principles applicable to a writ of *mandamus* should generally be followed *Bank of Bombay* v. *Suleman Somji, I. L. R. 32 Bom. 466,* referred to. PROVAS CHANDRA ROY, *In the matter of* 1913) . . . **I. L. R. 40 Calc. 588**

**PLEADING.**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52.
**I. L. R. 37 Bom. 427**

**PLEADINGS.**

*See* HINDU LAW—WIDOW.
**I. L. R. 35 All. 326**

**1.** ——— *Quœre*: Whether a defendant who puts the plaintiffs to proof of a family usage alleged by them is precluded at a later stage from saying that he will not insist on the proof of usage but will accept the plaintiff's case on the point. HAZARI MALL BABU *v.* ABANINATH ADHURJYA (1912) . **17 C. W. N. 280**

**2.** ——— *Plaint, amendment of, when should be allowed* Amendment of a plaint for a claim should be allowed only where the claim has been omitted by a mistake or inadvertence or for similar reasons, and not deliberately. BHUKI KOER *v.* RAM KHELWAN PERSHAD (1912) . . . . **17 C. W. N. 311**

**3.** ——— *Change of case—Issues—Suit to set aside a deed of gift as fraudulent, failing, claim for accounts of a share as from agent.* Where on the eve of a contemplated pilgrimage to Mecca, *M* transferred her property to her nephew *E* by a deed of gift, and on the same date the latter executed a deed which provided that a fourth share of the properties thus conveyed should remain in her possession during her life-time, and on her death should come into *E's* possession. *Held,* that the fact that in a suit

**PLEADINGS—*concld.***

to set aside the deed of gift on the ground of fraud and misrepresentation which failed, a general issue as to whether *E* was liable to render an account to *M* was raised with reference to the whole property, would not justify the Court in passing a decree directing *E* to account for the profits of a 4 as. share, on the footing of his being *M*'s agent in respect of that share MAHMUDA KHATUN CHOWDHURANI *v* MOHAMED ELAHADAD KHAN PANI (1912) . . . **17 C. W. N. 427**

**PLEDGE.**

*See* BAILMENT . **I. L. R. 37 Bom. 122**

**POLICE ACT (V OF 1861 AS AMENDED BY ACT VIII OF 1895).**

———— s. 15, cl. (*4*)—

*See* PUNITIVE POLICE.
**I. L. R. 40 Calc 452**

**POLICE REGULATIONS.**

*See* PROCESSION
**I. L. R. 40 Calc. 470**

**POLICE REPORT.**

*See* COGNIZANCE
**I. L. R. 40 Calc. 854**

**POLICY.**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900), S 130
**I. L. R. 37 Bom. 198**

**POLITICAL RESIDENT AT ADEN.**

*See* DIVORCE ACT (IV OF 1869), S. 3 (*2*)
**I. L. R. 37 Bom. 57**

**POSSESSION.**

*See* PETROLEUM.
**I. L. R. 40 Calc. 356**

———— suit for—

*See* MESNE PROFITS.
**I. L. R. 40 Calc. 56**

**POSSESSORY RIGHT.**

———— protection of, as against trespassers—

*See* TREE-PATTA.
**I. L. R. 36 Mad. 148**

**POWER OF ATTORNEY.**

———— ———— construction of—

*See* LETTERS OF ADMINISTRATION.
**I. L. R. 40 Calc. 74**

**PRACTICE**

*See* ASSESSORS, EXAMINATION OF
**I. L. R. 40 Calc. 163**

*See* ATTACHMENT.
**I. L. R. 40 Calc. 105**

*See* ATTORNEY AND CLIENT.
**I. L. R 40 Calc. 386**

**PRACTICE—*contd.***

*See* BOMBAY REGULATION II OF 1827, S. 52 . . **I. L. R. 37 Bom. 303**

*See* BOOK OF REFERENCE.
**I L. R. 40 Calc. 898**

*See* CHARGE . **I. L. R. 40 Calc. 168**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 97.
**I. L. R. 37 Bom. 480**

*See* COGNIZANCE.
**I. L. R. 40 Calc. 854**

*See* COMPLAINT, DISMISSAL OF.
**I. L. R. 40 Calc. 407**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 248, 258, 345
**I. L. R. 37 Bom. 369**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 337, CL. (*3*).
**I. L. R. 37 Bom. 146**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 397, 123.
**I. L. R. 37 Bom. 178**

*See* CRIMINAL REVISION.
**I. L. R. 40 Calc. 41**

*See* INTERROGATORIES.
**I L. R. 37 Bom. 347**

*See* JURISDICTION **I. L. R. 35 All. 63**

*See* JURISDICTION OF CRIMINAL COURT—FRESH PROCEEDINGS.
**I. L. R. 40 Calc. 71**

*See* LETTERS OF ADMINISTRATION.
**I. L. R. 40 Calc. 74**

*See* LIMITATION ACT (XV OF 1877), S 19, SCH II, ART 148.
**I. L. R. 35 Calc 272**

*See* MAHOMEDAN LAW—WAKF.
**I. L R. 35 All. 68**

*See* REFUND OF COURT-FEE
**I. L. R. 40 Calc. 365**

*See* SANCTION FOR PROSECUTION.
**I. L. R. 40 Calc. 423**

*See* TRANSFER OF APPEAL.
**I. L. R. 40 Calc. 259**

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S. 52.
**I. L. R. 37 Bom. 427**

1. ———— ———— ———— *Appellate Court, duty of—Defective judgment—Omission to consider the defence evidence in a bad livelihood case—Criminal Procedure Code (Act V of 1898), ss. 110, 118, 367 and 424* It is the duty of the Appellate Court, on an appeal from an order under ss. 110 and 118 of the Criminal Procedure Code, to look into the evidence for the defence, and after dealing with it to come to a decision thereon, notwithstanding that the counsel for the appellant has practically ignored it during his arguments. FIDOI HOSSAIN *v.* EMPEROR (1912)
**I. L. R. 40 Calc. 376**

**PRACTICE**—*concld.*

2. ——— *Criminal Proceedings—Special Leave to Appeal—Limit of jurisdiction.* Leave to appeal from convictions and sentences on the grounds of alleged irregular conduct of the proceedings, misdirection to the Jury, and misreception of evidence refused, the case not coming within the principle as laid down in *In re Dillet, 12 App. Cas, 459.* CLIFFORD *v.* KING-EMPEROR (1913) . **L. R. 40 I. A 241**

3. ——— *Question of jurisdiction arising before Magistrate must be decided by himself—Magistrate cannot invite District Magistrate's opinion.* While a Magistrate was trying a case, a question arose whether the accused was amenable to his jurisdiction The Magistrate felt himself doubtful on the question and he referred it to the District Magistrate for opinion. On receipt of the opinion, he directed the trial to proceed before him · *Held,* that it was not competent to the Magistrate to seek the opinion of the District Magistrate in the way he did, but that he should finish the inquiry and complete the record by the reception of all evidence of relevant facts including the facts which bear upon the question of the accused's amenability to a British Court's jurisdiction, and then consider for himself the question of law arising on those facts. EMPEROR *v.* ABDUL RAHIMAN (1912) . . **I. L. R. 37 Bom. 144**

4. ——— *Evidence—Defendant's right to offer evidence.* Where the defendant appears and the plaintiff does not appear or offers no evidence when a suit is called on for hearing, the Court has no jurisdiction except to dismiss the suit for want of prosecution. the defendant is not entitled to have his evidence heard before the suit is dismissed. *Ex parte Jacobson, L. R 22, Ch. D. 312,* distinguished. KESRI CHAND *v.* NATIONAL JUTE MILLS CO. (1912) **I. L. R. 40 Calc. 119**

**PRE-EMPTION.**


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| 1. CUSTOM . . . . . | 313. |
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*See* CIVIL PROCEDURE CODE, 1908, ss. 2, 104, 148 . **I. L. R. 35 All. 582**

*See* CIVIL PROCEDURE CODE, 1908, O. XXI, R. 88 . **I. L. R. 35 All. 296**

*See* HINDU LAW—JOINT FAMILY. **I. L. R. 35 All. 564**

1. CUSTOM

——— *Custom—Evidence—Sales to strangers unchallenged, as evidence negativing custom—Mode in which such sales should be proved.* Where the Court is trying the issue of the existence or non-existence of a custom of pre-emption, every instance of a sale to a stranger is material evidence which the Court ought to take into consideration and weigh when coming

**PRE-EMPTION**—*contd.*

1. CUSTOM—*concld.*

to a conclusion on the issue. But a mere vague statement that there had been sales to strangers without the production of the sale deeds or certified copies thereof, and without some further details of the sale, is not sufficient to prove sales to strangers. *Sewak Singh* v. *Girja Pande, 2 All. L J. 6,* discussed. JANKI MISIR *v.* RANNO SINGH, (1913) . . . . . **I. L. R. 35 All. 472**

2. RIGHT OF PRE-EMPTION.

——— *Subject-matter of suit re-sold at advanced price—Second sale subject to right of pre-emption in respect of the first.* A house in the city of Benares subject to a customary right of pre-emption was sold for Rs. 1,150. The vendee resold it shortly afterwards to the defendant for Rs. 4,000. *Held,* on suit brought to pre-empt the property at the original price of Rs. 1,150, that the second sale was subject to the right of pre-emption and the pre-emptor was only bound to pre-empt the first sale, making the subsequent vendee a party to the suit so as to bind him by the proceedings. *Kamta Prasad* v. *Mohan Bhagat, I. L. R. 32 All. 45,* referred to. KHETTAR CHANDRA BASU MALLIK *v.* NABIN KALI DEBI (1913) **I. L. R. 35 All. 385**

3. WAJIB-UL-ARZ.

1. ——— *Wajib-ul-arz—Partition of village into several mahals—Dastur dehi, relating to whole village—Suit by co-sharer of one mahal against co-sharer of another mahal on ground of nearness in relationship to vendor.* The *dastur dehi* of a village divided into several mahals, but which nevertheless was held to be applicable to the whole village, and to represent an arrangement come to by the co-sharers in the village amongst themselves, provided, as to pre-emption, as follows :— "If a co-sharer wants to sell his share, he must sell first to near co-sharers, then in the patti, then in the mahal, then in the village." *Held,* that the effect of this clause was to give to a co-sharer in one mahal, who was a relation of the vendor, a preferential right of pre-emption over a co-sharer in another mahal who was not a relation. YAD RAM *v.* CHEDA LAL (1913) . . . . **I. L. R. 35 All. 478**

2. ——— *Wahib-ul-arz—Co-sharer in patti and co-sharers in mahal—Fictitious conveyance of share in patti to latter—Alleged previous offer to plaintiff—Witnesses found to have deposed falsely as to part, if to be believed as to other parts—Party not coming forward to contradict positive evidence of opponent as to matters within his personal knowledge, if may succeed.* Plaintiff being a co-sharer in the *patti* sued for pre-emption, and the defendants who were only co-sharers in the *thok* or *mahal* resisted his claim on the grounds, (i) that they had by a prior conveyance acquired a share in a *patti,* and (ii) that the plaintiff had refused the offer of the defendants'

**PRE-EMPTION**—*concld*

3. WAJIB-UL-ARZ—*concld.*

vendor to sell the property to him: *Held*, that the reasons given by the High Court for holding in reversal of the first Court that the prior conveyance did not represent a genuine transaction and was fabricated with a view to defeat the claim for pre-emption which the plaintiff was about to bring, were cogent and decisive. The High Court also disbelieved the evidence adduced by the defendants to prove plaintiff's refusal of the offer to him of the property by the defendant's vendor on the ground that the witnesses were the same who spoke to the prior conveyance, and one part of whose evidence had been found to be distinctly false · *Held*, that it was open to the High Court to take this view, although there was one witness who did not depose to the deed and neither plaintiff nor other persons in whose presence the offer was stated to have been made, had come forward to contradict the defendant's witnesses. The judgment of the High Court should not be treated in a piecemeal manner, and taken as a whole was correct. MATHURA PRASAD *v.* SHAIKH MUHAMMAD (1912) . . **17 C. W. N. 981**

**PRELIMINARY DECREE.**

*See* BOMBAY REGULATION (II OF 1827), S. 52 . . **I. L. R. 37 Bom. 303**

*See* CIVIL PROCEDURE CODE, 1908, s. 97. **I. L. R. 37 Bom. 480**

*See* CIVIL PROCEDURE CODE, 1908, O. XX, R. 18 . . **I. L. R. 35 All. 159**

——— *Findings on issues relating to misjoinder, limitation and jurisdiction—Drawing up a preliminary decree—Material irregularity in declining to do so.* A Subordinate Judge in trying a suit gave his decision on issues relating to misjoinder, limitation and jurisdiction and directed the parties to adduce evidence relating to accounts. He was asked to draw up a preliminary decree in accordance with his findings on the issues and having declined to do so. *Held*, that the Subordinate Judge committed a material irregularity in the exercise of his jurisdiction. The decision of the issues conclusively determined the rights of the parties regarding some matters in controversy so far as his Court was concerned, the decision on each of those issues was, therefore, sufficient to constitute a preliminary decree. *Per* CURIAM: It is the duty of the Court, where it is applied to after the passing of a preliminary decree, to have the decree drawn up so as to enable the party aggrieved to appeal. *Bai Divali* v. *Shah Vishnab Manordas*, *I. L. R. 34 Bom. 182*, referred to. SIDHANATH DHONDDEV *v.* GANESH GOVIND (1912) . . **I. L. R. 37 Bom. 60**

**PRELIMINARY ENQUIRY.**

*See* COMPLAINT, DISMISSAL OF. **I. L. R 40 Calc. 444**

**PRELIMINARY ORDER.**

——— **defective, effect of—**

*See* CRIMINAL PROCEDURE CODE, 1898, SS. 145, 435 TO 439. **I. L. R. 36 Mad. 275**

**PRESENTATION.**

*See* REGISTRATION ACT (XVI OF 1908), S. 32 . **I. L. R. 35 All. 72, 134**

**PRESIDENCY TOWNS INSOLVENCY ACT (III OF 1909).**

——— **ss. 6, 27, 36, 121**—*Indian Insolvency Act (11 & 12 Vict., c. 21), s. 3—Bombay Insolvency Rules under Indian Insolvency Act, r. 37—Officer appointed by the Chief Justice under s. 6 of the Presidency Towns Insolvency Act—Attorneys' right of audience.* The petitioner complained that in certain proceedings before the officer appointed under s 6 of the Presidency Towns Insolvency Act, namely, on the holding of the public examination of insolvents under s. 27 of the Act and the examination of persons summoned by the Court under s. 36, such examinations had been conducted by solicitors. The petitioner submitted that, for reasons set forth in the petition, solicitors had no right of audience before the said officer, and petitioned the Chief Justice of the Bombay High Court to form a Special Bench for the determination of the question whether any legal practitioner except counsel had the right to audience before the officer so appointed. *Held*, that attorneys of the High Court have a right of audience before the officer appointed by the Chief Justice in the exercise of the powers conferred upon him under s. 6 of the Presidency Towns Insolvency Act. *In re* ADVOCATE-GENERAL OF BOMBAY (1913) **I. L. R. 37 Bom. 464**

——— **ss. 17, 126—**

*See* INSOLVENCY . **I. L. R. 40 Calc. 78**

——— **ss. 52, 62, 64—**

*See* SALE OF GOODS. **I. L. R. 40 Calc. 523**

**PRESS ACT (I OF 1910).**

——— **s. 3**——*Printing Press—Order to make deposit—Failure to make deposit—Liability—Deposit to be made within reasonable time.* The Government of Bombay, on the 13th September 1912, issued to the applicant a notice calling upon him under s. 3, sub-s (2), of the Indian Press Act, 1910, to deposit with the District Magistrate of Kaira security to the amount of Rs. 3,000. It was served on the applicant on the afternoon of the 28th September. On the 30th idem, which was a Monday, the applicant sent off by post letters to His Excellency the Governor and to the District Magistrate of Kaira, stating that he had closed down the press. On the 2nd October, the applicant sold the press, and had his declaration in respect of the press cancelled the next day. On the 5th October, proceedings were taken against the applicant, under s.

**PRESS ACT (I OF 1910)**—*concld.*

——— **s. 3**—*concld.*

23 (*1*) of the Act, for keeping the press without making the deposit. He was convicted of the offence. The applicant having applied to the High Court: *Held*, that no limit of time having been given to the applicant within which to make the deposit ordered, the notice and s. 3 of the Indian Press Act, 1910, must be construed as meaning that the deposit ordered should be made within a reasonable time. *Held*, also, that the interval which elapsed between the afternoon of the 28th September and the 3rd October could not be reckoned as an unreasonable time. EMPEROR *v.* FULCHAND BAPUJI (1913)

**I. L. R. 37 Bom. 555**

**PRESUMPTION.**

*See* PUBLIC GAMBLING ACT (III OF 1867) ss. 3, 4 . . **I. L. R. 35 All. 1**

*See* STANDARD OF PROOF.

**I. L. R. 40 Calc. 898**

**PREVENTION OF CRUELTY TO ANIMALS ACT (XI OF 1890).**

——— **s. 3**—*Whether the offence must be committed within sight of any person—Preparation of 'piri' dye from cow's urine.* Where it was found that the petitioner tortured his cows by depriving them of water and these cows were tied up where the sufferings of the animals could be witnessed by persons from the lane on which the house of the petitioner was situated: *Held*, that the offence comes within the purview of s. 3 of the Prevention of Cruelty to Animals Act (XI of 1890) MISRI GOPE *v.* ABDUL LATIF (1912) . . . **17 C. W. N. 332**

**PREVENTION OF GAMBLING ACT (BOM. IV OF 1887).**

——— **s. 4, cls.** (*a*), (*c*)—*Place—Interpretation—A chok having houses on all sides and approached by a narrow lane.* The accused were convicted under s 4, cls. (*a*) and (*c*), of the Bombay Prevention of Gambling Act (Bombay Act IV of 1887), for having the use of a place and keeping or using the same for the purpose of a common gaming house. The spot in question was small open space surrounded by houses on all sides and accessible only by a narrow lane on which was a sign-board pointing to the spot. The accused No. 1 was the lessee in occupation of the spot. The question for determination was whether the spot in question was a "place" within the meaning of s 4 of the Act · *Held*, that the spot in question was a place within the meaning of s. 4, inasmuch as it was a small area, limited by metes and bounds, surrounded on all sides by buildings, and appropriated for the business of betting by the accused No 1 becoming the lessee in occupation of it EMPEROR *v.* FATTOO MAHOMED . . . **I. L. R. 37 Bom. 651**

**PRINCIPAL AND AGENT.**

*See* ACCOUNT, SUIT FOR.

**I. L. R. 40 Calc. 108**

**PRINCIPAL AND AGENT**—*contd*

**1.** ——— *Suit for declaration of title to the benefits of a decree—Maintainability of the suit* Where an agent entered into a contract in his own name with a third party and brought a suit to recover damages for breach of the same and obtained a decree thereon, a suit, subsequently brought by the principal against the agent for declaration of title to the decree, was not maintainable. The principal, before the suit was brought by his agent, might have adopted the contract made by the latter, and sued on it; but if he did so, he was bound to adopt the contract *cum onere*. *Udell* v *Atherton*, 7 H. & N. 172, and *Bristow* v. *Whitmore*, *9 H. L. C 391*, approved He might also have intervened at any stage in the action which had been commenced by his agent *Sadler* v. *Leigh*, *4 Camp. 195*, approved. GODHANRAM *v.* JAHARMULL PUGLIA (1912) . **I. L. R. 40 Calc. 335**

**2.** ——— *Agent's death—Liability of legal representatives to render accounts—Liability of agent's assets—Remedy of principal—Suit for damages—Onus—Limitation—Limitation Act (IX of 1908), Sch I, Arts 89, 115, 120.* The legal representatives of an agent cannot be called upon to render accounts to the principal in the same sense as the agent himself, as they cannot be required to explain matters of which they have no personal knowledge and to assist the principal in the investigation of the management of his estate of which they are ignorant The estate of the agent however continues to be liable and the remedy of the principal is to sue the representatives for any loss he may have suffered by reason of the negligence or misconduct, misfeasance or malfeasance of his agent. The maxim *actio personalis moritur cum persona* would be no bar to an action where the act complained of was not a mere tort but was a breach of a *quasi*-contract, where the claim was founded on a breach of a fiduciary relation or on failure to perform a duty. *Conchr* v. *Murrieta*, *40 Ch D. 543*, *Philips* v. *Homfray*, *24 Ch D 439*, relied on. A claim by the principal against the legal representatives of the agent for money misappropriated by the agent and for damages for loss suffered by reason of the agent's negligence or misconduct is therefore maintainable—the suit being one not for accounts strictly so-called but for money payable to the principal by the representatives of the agent out of the assets in their hands. *Manmothonath Bose* v. *Basonto Kumer Bose*, *I L. R 22 All. 332*, relied on In such a suit, the burden will be on the plaintiff to prove his case Such a suit is not governed by Art. 89 of the Limitation Act, but by either Art. 115 or Art. 120 *Lawless* v. *Calcutta L. & S. Co.*, *I. L. R. 7 Calc. 627*, *Harender* v. *Administrator-General*, *I. L R. 12 Calc. 357*, *Bindraban* v. *Jamuna*, *I L R 25 All 5*, referred to. KUMEDA CHARAN BALA *v* ASUTOSH CHATTOPADHAYA (1912) . . . . . **17 C. W. N. 5**

**3.** ——— *Death of agent—Suit for accounts if lies or may be continued against heirs.* A suit for accounts brought against an

**PRINCIPAL AND AGENT**—*concld.*

agent may be continued, on his death pending suit, against his legal representatives. *Semble*: A suit for accounts lies against the heirs of a deceased agent. *Manmatha Nath Bose Mullick* v. *Bosanta Kumer Bose Mullick, I. L. R. 22 All 332*, doubted. *Kumeda Charan* v. *Ashutosh, 16 C. L. J. 282*, referred to. BAHADUR SINGH *v.* BASUNTA KUMAR ROY (1913) . . **17 C. W. N. 695**

**PRINTING PRESS.**

*See* PRESS ACT (I OF 1910), s. 3.
**I. L. R. 37 Bom. 555**

**PRIOR AND SUBSEQUENT INCUMBRANCES.**

*See* CIVIL PROCEDURE CODE, 1908, s. 11.
**I. L. R. 35 All. 111**

**PRIORITY.**

*See* REGISTRATION ACT (XVI OF 1908) S. 50 **I. L. R. 35 All. 271**

**PRIVATE INTERNATIONAL LAW.**

——————— *Jurisdiction—Power of Foreign Court to sell debt which has arisen in British India—lex loci rei sitae.* Where a pledge of movable property or of a debt is allowed by the law of the territory where the transaction took place, the Court of that territory has jurisdiction to sell the property in execution of its decree so as to pass a valid title to it, even if the property is situate outside of its jurisdiction. *Ghaneshamlal* v *Bhansali, I. L. R. 5 Bom. 249*, distinguished. D'COUTHA *v.* ASSAN KUNHU (1913)
**I. L. R. 36 Mad. 1**

**PRIVATE KNOWLEDGE.**

——————— of facts by Judge—

*See* EVIDENCE . **I. L. R. 36 Mad. 168**

**PRIVILEGE.**

*See* DEFAMATION—STATEMENT BY ACCUSED . **I. L. R. 40 Calc. 433**

*See* LIMITATION.
**I. L. R. 40 Calc. 898**

**PRIVILEGE AGAINST COURT.**

*See* INSTRUCTIONS TO COUNSEL.
**I. L. R. 40 Calc 898**

**PRIVILEGE OF COUNSEL.**

*See* LIMITATION
**I. L. R. 40 Calc. 898**

**PRIVY COUNCIL.**

*See* LAND ACQUISITION ACT (I OF 1894), S. 54 . . **I. L. R. 37 Bom. 506**

*See* APPEAL TO PRIVY COUNCIL.

*See* PRIVY COUNCIL, PRACTICE OF.

1. ——————— *Privy Council—Appeal, new case on—Practice.* The hearing of the appeal being *ex parte*, the Judicial Committee refused to depart from the established practice

**PRIVY COUNCIL**—*concld.*

of not allowing the appellant to make a new case based on grounds which were not urged in the Courts in India, were not specified in the petition to the High Court for leave to appeal, and were not suggested in the reasons contained in the case for the appellant SONI RAM *v.* KANHAIYA LAL (1913) . . . . **17 C. W. N. 605**
**I. L. R. 35 All. 227**

2. ——————— *Decision, inconsistent—Binding character.* The fact of a decision of the Judicial Committee being consistent with an earlier one, cannot affect its binding character and the High Court is bound to follow it. MADHU SUDAN MONDAL *v.* RADHIKA PRASANNO DAS. (1912) **17 C. W. N. 873**

**PRIVY COUNCIL, PRACTICE OF.**

*See* ADOPTION . **I. L. R. 40 Calc. 879**

*See* LIMITATION ACT (XV OF 1877), S. 19, SCH. II, ART. 148.
**I. L. R. 35 All. 227**

——————— *Appeal in criminal case—Case where some substantial and grave injustice has been done—Conviction on partly inadmissible, and unreliable evidence—principles governing interference with verdict of Criminal Court in India—Costs where appeal of accused person succeeds.* Special leave to appeal in a criminal case may be granted where "by some disregard of the forms of legal process, or by some violation of the principles of natural justice, or otherwise, some substantial and grave injustice has been done." *In re Dillet, L. R. 12 A. C. 459, per* Lord Watson, followed. In this case in which the appellant had been tried with others and convicted of abetment of murder, and sentenced to death, their Lordships, in allowing the appeal, were of opinion that injustice of the kind above mentioned had been done, inasmuch as a vast body of inadmissible evidence, hearsay and other, had been admitted; that when admitted it had been used to the grave prejudice of the appellant; and that at the end of the hearing before the Judge of first instance there did not exist any reliable evidence upon which a capital conviction could be safely or justly based. *Held*, that under these circumstances whatever doubts their Lordships might have of the appellant's innocence, or whatever suspicions they might entertain of his guilt, or however great might be their reluctance to interfere with or overrule the decisions of the Indian Courts in Criminal matters, the conviction should not be allowed to stand *Held*, also, that this case was not one of disturbing the verdict of the Judge of a Criminal Court in India who having seen and heard the witnesses had believed them and founded his decision on their testimony; it was the reverse of that, because in this case the Judge who saw and heard the witness upon whose evidence the conviction was mainly based, did not think his evidence so reliable that he could act upon it alone and had, therefore, ordered the discharge of the other accused implicated by it. Costs of a successful appeal were not allowed as against the

**PRIVY COUNCIL, PRACTICE OF**—*concld.*

Crown. *Johnson* v. *Rex*, [*1904*] *A.C. 817, 824*, followed. VAITHINATHA PILLAI *v* KING-EMPEROR (1913) . . . I. L. R. 36 Mad. 501

**PROBATE.**

*See* HINDU LAW—STRIDHAN
I. L. R. 40 Calc. 82

*See* LIMITATION ACT (IX OF 1908) SCH. I, ART. 95 I. L. R. 37 Bom. 158

*See* SUCCESSION ACT (X OF 1865), S. 244.
I. L. R. 35 All. 448

——— *Caveat, if may be entered by widow of a predeceased son—Maintenance of widow of predeceased son, if may be affected by probate proceedings—Obligation of the heir—Sufficient interest.* The widow of a predeceased son of the testator has in fact no interest sufficient to enable her to appear on probate proceedings. Her right to maintenance will not be affected by anything that may take place on the hearing of an application for probate. *Bai Parvati* v. *Taruadi Dolatram, I. L. R. 25 Bom. 263*, dissented from. *Yamunbai* v. *Manubai, I. L. R. 23 Bom. 608*, approved. *Rangammal* v *Echammal, I. L. R. 22 Mad 305*, followed. *Seddeshury Dassi* v. *Janardan Sarkar, I. L. R. 29 Calc. 557*; *6 C. W. N. 530*, referred to. *In the goods of* GOBINDA CHANDRA BABAJEE (1913) . 17 C. W. N. 1141

**PROBATE AND ADMINISTRATION ACT (V OF 1881).**

——— s. 23— *Grant of Letters of Administration —Title to property if Court would go into, in granting administration—Practice.* It is not the practice of the Court in its Testamentary and Intestate jurisdiction to go into questions of title in a application for the grant of letters of administration. The Court would not frame issues or go into evidence to decide as to who is entitled to the property. Letters of administration were ordered to be issued to the husband in respect of his deceased wife's estate upon furnishing security upon allegation in the husband's petition that part of such estate was *jautuka stridhan*, although it was denied by his wife's brother who entered caveat, but did not apply for letters of administration himself. *In the goods of Raghubar Hazam, 3 C W. N. cclxxvii, Raghunath Misser* v. *Musst. Pate Koer, 6 C. W N. 345*, and *Ochavaram* v. *Dolatram, I. L. R. 28 Bom. 644*, relied on. NISHI KANTA CHATTERJEE *v.* ASHUTOSH MUKERJEE (1912) . . . . 17 C. W. N. 613

——— s. 50, Expl. (4).

*See* LETTERS OF ADMINISTRATION.
I. L. R. 40 Calc. 50

——— s. 98—

*See* ADMINISTRATION
L. R. 40 I. A. 236

**PROCEDURE.**

*See* CIVIL PROCEDURE CODE, 1908, S. 47 . . I. L. R. 35 All. 243

**PROCEDURE**—*concld.*

*See* CIVIL PROCEDURE CODE, 1908, S. 92 (*1*) . . I. L. R. 35 All. 98

*See* CIVIL PROCEDURE CODE, 1908, O. V, RR. 1 AND 2 ; O. IX, R. 13
I. L. R. 35 All. 163

*See* CIVIL PROCEDURE CODE, 1908, O. IX, R. 8 . . I. L. R. 35 All. 105

*See* CIVIL PROCEDURE CODE, 1908, O. IX, RR. 8 AND 9 ; O. XXII, RR. 3, 9.
I. L. R. 35 All. 331

*See* CRIMINAL PROCEDURE CODE, S. 125.
I. L. R. 35 All. 103

*See* EXECUTION OF DECREE.
I. L. R. 35 All. 119

*See* REGISTRATION ACT (XVI OF 1908), SS. 31, 32, 52, 87 I. L. R. 35 All. 34

*See* UNITED PROVINCES MUNICIPAL ACT (I OF 1900), S. 187.
I. L. R. 35 All. 450

*See* WORKMEN'S BREACH OF CONTRACT (XIII OF 1859) . I. L. R. 35 All. 61

**PROCESSION.**

——— *Commissioner of Police —Orders prohibiting a public procession and a particular individual from joining it—Legality of such orders—Public notice of order, necessity of—Power of Indian Legislature to make police regulations regarding public processions—Calcutta Police Act (Beng. IV of 1866), ss. 62A (4), 102A—Calcutta Suburban Police Act (Beng. II of 1866), ss. 39A (4), 49A—Calcutta and Suburban Police (Amendment) Act (Beng. III of 1910), ss. 16 and 31.* Sub-s. (*4*) of s. 62A of the Calcutta Police Act and of s. 39A of the Suburban Police Act must be strictly construed. It empowers the Commissioner of Police, when he considers it necessary to do so for the preservation of the public peace or public safety, to prohibit a procession or public assembly but not a particular individual from taking part in the same. The sub-section does not require any public notice of an order passed thereunder to be given, within the meaning of ss. 102A of the Calcutta and 49A of the Suburban Police Acts. *Semble*: Indian Legislature is competent to make police regulations of the kind in the interests of public peace and safety. LEAKAT HOSSAIN *v.* EMPEROR (1913)
I. L. R. 40 Calc. 470

**PROCLAMATION OF SALE.**

*See* HIGH COURT, BOMBAY, CIVIL CIRCULAR 96, CL. (*l*).
I. L. R. 37 Bom. 631

——— irregularities in—

*See* APPEAL TO PRIVY COUNCIL.
I. L. R. 40 Calc. 635

**PROFESSIONAL CONDUCT.**

*See* BAR COUNCIL, RESOLUTIONS OF.
I. L. R. 40 Calc. 898

**PROFESSIONAL CONDUCT OF COUNSEL.**

*See* LIMITATION **I. L. R. 40 Calc. 898**

**PROFESSIONAL ETIQUETTE.**

*See* COUNSEL, PROFESSIONAL CONDUCT OF . . **I. L. R. 40 Calc. 898**

**PROMISSORY-NOTE.**

———— *Acknowledgment—Deed, construction of—Unconditional undertaking and the document styled as promissory-note* It is no doubt true that the question whether an instrument is a promissory-note or not should be judged by the words used, and the instrument must contain in words an unconditional undertaking to pay a sum of money, and it is not enough that the substantial effect of the instrument should be to make the executant liable to pay a sum of money. *Held*, that the following document wherein the executant not only made an unconditional undertaking to pay but also styled it a promissory-note was a promissory-note and not a mere recital of a liability, and as such was not admissible in evidence for want of a proper stamp. "Promissory-note executed on . . . in favour of . . . by . . . In the matter of the purchase of piece-goods by me from your shop on this date, the sum found due by me as per *patty* (list) is Rs. 600 . . . which sum I promise to you or to your order on demand with interest at 1½ per cent. To this effect . . . " *Tirupathi Goundan* v. *Rama Reddi*, *I. L.R. 21 Mad. 49*, *Govind* v. *Balvant Rao*, *I. L.R. 22 Bom. 986*, *Horne* v. *Redfearn*, *4 Bing. N. C. 433*, and *White* v. *North*, *3 Exch. 689*, distinguished. *Morris* v. *Lee*, *92 E. R. 409*, referred to. KARUTHAPPA ROWTHAN *v.* BAVA MOIDEEN SAHIB (1913) **I. L. R. 36 Mad. 370**

**PROOF.**

———— **standard of—**

*See* LIMITATION.

**I. L. R. 40 Calc. 898**

———— *Penal Code (Act XLV of 1860), s. 147, s. 304 read with s. 149—Prosecution evidence mostly disbelieved—Hypothetical case made by the Court—Propriety of conviction.* Where the Sessions Judge discarded almost in their entirety the accounts of the occurrence given by the witnesses for the prosecution and substituted a narrative of his own, founded for the most part on surmise and conjecture, and the story of the origin of the occurrence and the course of events as reconstructed by the Sessions Judge were wholly inconsistent with the story told by the witnesses, and the appellants were convicted under s 147 and s. 304 read with s 149, Penal Code: *Held*, that the conviction should be set aside. KALU KHALASHI *v.* THE KING-EMPEROR (1912) . . . . . **17 C. W. N. 538**

**PROPRIETARY TITLE.**

*See* AGRA TENANCY ACT (II OF 1901) ss. 58, 200 **I. L. R. 35 All. 157**

**PROSECUTION.**

*See* COLLECTOR **I L. R. 40 Calc. 465**

———— **order for—**

*See* JURISDICTION OF CRIMINAL COURT **I. L. R. 40 Calc. 360**

———— **withdrawing from—**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), ss. 248, 258, 345. **I. L. R. 37 Bom. 376**

**PROSTITUTE'S PROPERTY.**

*See* HINDU LAW—STRIDHAN. **I. L. R. 40 Calc. 650**

**PROVIDENT INSURANCE SOCIETIES ACT (V OF 1912).**

———— **ss. 5, 6—**

*See* TRADE-NAME. **I. L. R. 40 Calc. 570**

**PROVIDENT INSURANCE SOCIETY.**

*See* TRADE-NAME. **I. L. R. 40 Calc. 570**

**PROVINCIAL INSOLVENCY ACT (III OF 1907).**

———— **ss. 2 (*l*) (*g*), 18, 20 (*c*), 40 (*l*), 44, 47—**

*See* RECEIVER **I. L. R. 40 Calc. 678**

———— **ss. 4 to 6, 11 to 16, 26, 43, 44 and 47—***What matters are necessary to be enquired into before adjudication—What are proper subjects of enquiry before deciding on final discharge.* Before passing an order of adjudication under the Provincial Insolvency Act, it is not for a Court to decide whether the debts stated in the petition for insolvency are real, whether the petitioner has not concealed any property of his from his lists of assets or whether he is unable to pay his debts and similar questions. All these are properly subjects that ought to be enquired into before giving a discharge. The only things that are necessary to be decided before adjudication, are whether the creditor or debtor is entitled to present the petition, whether the required notices have been served and whether the debtor has committed the alleged act of insolvency. *Per* CURIAM: S. 14 (2) provides that "the Court shall also examine the debtor if he is present, as to his conduct, dealings, and property in the presence of such creditors as appear at the hearing, and the creditors have the right to question the debtor thereon." There is no doubt that both these clauses require that the acts referred to therein should be done. But it does not follow that every matter, which forms the subject of the examination of the debtor, should be decided before an order of adjudication is made. The scheme of Act III of 1907 is to make an order of adjudication at first and then to make a full enquiry into all matters connected with the insolvency before the final discharge is decided. The

## PROVINCIAL INSOLVENCY ACT (III OF 1907)—*concld.*

——— s. 4—*concld.*

Court has power to refuse to make an order not only on non-compliance of matters stated in s. 14 (*1*) but also on other grounds (*e.g*) prevention of abuse of process of the Court, unnecessary harassing of a debtor by the creditor. *Per* SUNDARA AYYAR, J —The object of the provision for examination in s. 14 (*2*) is, as in England, to obtain information at as early a stage as possible of the property and the whole conduct of the debtor in their relations to the insolvency proceedings. *Udai Chand Maiti* v. *Ram Kumar Khara, 15 C. W. N. 213, Ghirwadhari* v *Jai Narain, I. L. R. 32 All. 645,* and *Nathu* v *The District Judge of Benares, I. L. R. 32 All. 547,* disapproved. Various sections of the Act and of the English Bankruptcy Act, considered. JEER *v.* RENGASAMI (1913) . . . **I. L. R. 36 Mad. 402**

——— s. 6 (*2*)—*Application by debtor—"Residence" within jurisdiction—Temporary residence.* It is not necessary for a petitioner applying to be declared an insolvent to have resided for a long time at a place within the jurisdiction of the Court. Even temporary residence for a time and for a particular purpose is enough to give the Court jurisdiction to deal with an application for insolvency. *Ex parte Hecquard, 24 Q. B. D. 71,* followed. ABDUL REZAK *v.* BASIRUDDIN AHMED (1911) . . . **17 C. W. N. 405**

——— s. 15—*Application by debtor to be declared insolvent—Acts of bad faith, if ground for rejecting petition.* An application by a debtor to be declared an insolvent cannot be rejected on the ground of his having committed acts of bad faith. *Uday Chand Maiti* v. *Ram Kumer, 15 C. W. N. 213; 12 C. L. J. 400,* and *Samiruddin* v. *Kadumoyi, 15 C. W. N. 241; 12 C. L. J. 445,* followed. ABDUL REZAK *v.* BASIRUDDIN AHMED (1911) . . . . **17 C. W. N. 405**

——— ss. 22, 46, 52—*Limitation Act (IX of 1908), s. 5—Insolvency—Application to Court to reverse act of receiver—Limitation. Held,* that s. 5 of the Indian Limitation Act, 1908, does not apply to applications contemplated by s. 22 of the Provincial Insolvency Act, 1907. *Dropadi* v. *Hira Lal, I. L. R. 34 All. 496,* distinguished. THAKUR PRASAD *v* PANNO LAL (1913) . . . . **I. L. R 35 All. 410**

——— ss. 46, 47—

*See* APPEAL TO PRIVY COUNCIL.
**I. L. R. 40 Calc. 685**

——— s. 50—

*See* INSOLVENCY **I. L. R. 40 Calc. 78**

## PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887).

——— ss. 15, 33—*Suit to recover a sum of money as the value of trees felled by the defendant—Ownership of the trees in the plaintiff because the land on which they stood belonged to him—Incidental issue as to title to immoveable property—Jurisdiction of the Small Causes Court.* The plaintiff brought a suit in the Court of Small Causes to recover Rs. 12 as the value of certain trees felled by the defendant. The plaintiff's claim to relief proceeded on the basis that the trees belonged to him because the land on which they stood also belonged to him. A question having arisen as to the jurisdiction of the Court of Small Causes to entertain the suit · *Held,* by the Full Bench, that a Court of Small Causes could entertain a suit, the principal purpose of which was to determine a right to immoveable property, provided the suit in form did not ask for that relief but for payment of a sum of money. PUTTANGOWDA *v* NILKANTH KALO DESHPANDE (1913)
**I. L. R. 37 Bom. 675**

## PROVINCIAL SMALL CAUSE COURTS ACT (IX OF 1887)—*concld.*

——— s. 15—*concld.*

——— Sch. II, Art. 13—

*See* GENERAL CLAUSES ACT, s 3 (*25*).
**I. L. R. 35 All. 156**

——— *Land Cess—Suit by zamindar against inamdar for recovery of, not a suit of small cause nature.* A suit by a zamindar for the recovery of land cess from the inamdar is not a suit of a small cause nature within article 13 of the Provincial Small Cause Courts Act. MAHARAJAH OF VIZIANAGRAM v. VEERANNA (1913) . . . . **I. L. R. 36 Mad. 18**

## PUBLIC CONVEYANCES ACT (BOM. VI OF 1863).

——— s. 1—*Public conveyance—Hand-drawn lorry is a public conveyance.* A hand-drawn lorry plied for the conveyance of goods is a public conveyance within the meaning of the expression as defined in the Public Conveyances Act (Bombay Act VI of 1863). EMPEROR *v.* BANUBHAI HADUBHAI (1912) . . . **I. L. R. 37 Bom. 374**

## PUBLIC GAMBLING ACT (III OF 1867.)

——— ss. 3, 4—*Presumption—Warrant not in accordance with provisions of Act. Held,* that a warrant authorising the search of any house which the police officer to whom it has issued might think proper to search, was not a legal warrant within the provisions of the Public Gambling Act, 1867. EMPEROR v. HARGOBIND (1912)
**I. L. R. 35 All. 1**

## PUBLIC OFFICER.

*See* CIVIL PROCEDURE CODE (ACT V OF 1908) s 80 **I. L. R. 37 Bom 243**

## PUBLIC POLICY.

*See* CONTRACT ACT (IX OF 1872), s. 25 . . **I. L. R. 37 Bom 280**

*See* TRADE-MARK.
**I. L. R. 40 Calc. 814**

## PUNITIVE POLICE.

——— *Costs, apportionment of—Police Act (V of 1861 as amended by Act VIII*

**PUNITIVE POLICE**—*concld.*

*of 1895), ss. 15, cl. (4), 16—District Magistrate, duty of—Amount realized on apportionment made by a Deputy Magistrate, effect of—Secretary of State for India, suit against, if maintainable.* An apportionment of costs made by a Deputy Magistrate under s. 15, cl. (*4*) of the Police Act, for maintenance of a police force, is illegal. Where, therefore, an apportionment of costs having been made by a Deputy Magistrate, and which on appeal having been affirmed by the District Magistrate, the amount of costs assessed was recovered from a person, under s. 16 of the Act, by distress warrant · *Held*, that the amount not being legally realized, a suit for the recovery thereof would lie against the Secretary of State for India in Council *Svabhajan* v. *The Secretary of State for India, I. L. R. 28 Bom. 314*, referred to. KAILASH CHANDRA NAG *v.* SECRETARY OF STATE FOR INDIA (1912) **I. L. R. 40 Calc. 452**

**PURCHASE MONEY.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 97, 62.
**I. L. R. 37 Bom. 538**

——— **payment of—**

*See* PRE-EMPTION.
**I. L. R. 35 All. 582**

**PURCHASER.**

——— **liability of—**

*See* SALE FOR ARREARS OF REVENUE.
**I. L. R. 40 Calc. 89**

——— **rights of—**

*See* SALE FOR ARREARS OF REVENUE.
**I. L. R. 40 Calc. 89**

**PURDANASHIN LADY.**

——— **liability of—**

*See* MORTGAGE **I. L. R. 40 Calc. 378**

——— *Deed of trust executed by—Independent advice, absence of, if invalidates deed—Free agent, intelligent apprehension, nature of transaction—Bengali deed containing English words not explained.* The Courts should be careful to see that deeds taken from *purdah* woman have been fairly taken, that the party executing them has been a free agent and duly informed as to what she was about. It cannot be accepted as a formula conclusive of every case of a deed taken from a *purdah* woman that the absence of advice vitiates the transaction. Advice is not in itself essential; it is merely a means to secure that which is essential, an intelligent apprehension of the transaction The first and practically perhaps the most important question is, was the transaction a righteous transaction, *i. e*, was it a thing which a right-minded person might be expected to do? *Mohomed Buksh Khan* v. *Hasseini Bibi, L. R. 15 I. A 81, 92*, followed. Where an illiterate *purdahnashin* woman transferred her property to her brother and his family by a deed of trust and there was evidence that the idea had originated with her, that the draft was prepared

**PURDANASHIN LADY**—*concld.*

according to her instructions and that the deed which was in her vernacular was read over to her and she admitted execution before the Registrar, the fact that there was no evidence as to what advice she had had in the matter was not in itself sufficient to invalidate the deed Where the said vernacular deed contained some English words such as "trust" "committee" "revocable," and there was no evidence that those words were explained to her · *Held*, that though it is an infirmity in the case of those claiming under the instrument, it is not destructive of their claim under the instrument. KESHUB LALL PYNE *v* RADHA RAMAN NUNDY (1912) . . **17 C. W. N 991**

**PUTNI REGULATION (VIII OF 1819.)**

——— *Position of a purchaser at sale under—Previous suit for rent by original talukdar dismissed on the ground that relation of landlord and tenant did not exist—Subsequent suit by purchaser, if barred by res judicata—Purchaser if bound to annul incumbrance before suit—"Incumbrance," adverse possession when—Limitation.* Although the position of a purchaser at a sale under Reg VIII of 1819 may not be precisely that of a purchaser at a sale for arrears of revenue yet he is not privy in estate to the defaulting proprietor and he does not derive his title from him, as under s. 11 of the Regulation he has acquired the property free of all incumbrances that might have been created upon it by the act of the defaulter, his representatives or assignees and consequently a claim for rent by such a purchaser is not barred by *res judicata* by reason of the failure of a suit for rent by a previous putnidar, on the ground that the relationship of landlord and tenant between the then plaintiff and the defendants was not established. *Tara Prosad* v *Ram Nursingha Singh, 14 W. R. 283*, and *Radha Gobind* v. *Rakhal Das, I. L. R. 12 Calc. 82, 90*, relied on. A purchaser at a sale under Reg VIII of 1819 need not take any steps before the suit is brought to annul an incumbrance. The interest of an adverse possessor is an incumbrance only when the adverse possession has continued for the statutory period Adverse possession is arrested by the sale, and limitation runs as against the purchaser from the date when the sale becomes final. SATISH CHANDRA SINHA *v.* MUNJAMATI DEBI (1912) . . . . . **17 C. W. N. 340**

——— **ss. 3, 11, 15**—*Sale of putni—Durputnidar's interest, if ipso facto cancelled—Possession taken and proclamation obtained, effect of.* The purchaser at a *putni* sale under the provisions of Reg. VIII of 1819 acquires the right to take possession immediately, and one who has a tenure or a middle interest between the resident cultivator and the late *putnidar* cannot bar or in any way prejudice the purchaser's right *Mahini Chander Muzamder* v. *Joturmoy Ghose, 4 C. L. R. 422, Watson* v. *Collector of Rajshahi, 13 Moo. I. A. 160, Brindaban Chunder Surcar Chowdhury* v. *Brindabun Chunder Day Chowdhury, L R. 1 I. A. 178*, followed. *Madhu Sudhan Kundu* v. *Ramdhun*

**PUTNI REGULATION (VIII OF 1819)**—*concld.*

——— s. 3—*concld.*

*Ganguly, 12 W. R 383 ; 3 B. L. R 431,* distinguished. When the purchaser asserted her full right as such at the earliest possible occasion, took possession and obtained a proclamation as required by s 15 of the Regulation and then instituted a suit for rent against the cultivating tenant *Held,* that she was entitled to a decree, the interest of a *dur-putnidar* who resisted the claim being considered as cancelled KRISHNA PROMODA DASSI *v* DWARKA NATH SEN (1913)

17 C. W. N. 1092

## Q

**QABULIAT.**

*See* LANDLORD AND TENANT.

I. L. R. 35 All. 505

*See* KABULIYAT .

## R

**RAILWAY.**

*See* RAILWAYS ACT (IX OF 1890), S 101

I. L R. 37 Bom. 685

——— *Liability of Railway Companies for damage to goods entrusted to them for carriage—Onus of proof of negligence—Railway Act (IX of 1890), ss 72 and 76—Contract Act (IX of 1872), ss. 151, 152 and 161—Carriers Act (III of 1865), s 9—Responsibility of Railway Company for negligence in preventing damage from fire after discovery of the fire* On the 3rd of March 1909, the 2nd plaintiffs consigned 90 bales of cotton to the defendants at Malkapur for delivery to the 1st plaintiffs at Bombay. These 90 bales along with 19 others belonging to a different consignor were loaded upon a waggon at Malkapur Station by the defendants and the waggon was then closed and shunted on to a siding till the next day. On the 4th of March 1909 at 1-50 P.M , the waggon was attached to a train, being placed next to the engine. On the arrival of the train at Varangaum Station at 3-40 P.M., the said bales of cotton were found to be on fire The waggon containing them was immediately detached and placed on a siding, the doors were opened, 37 bales were extracted and the engine driver, having unsuccessfully tried to put out the fire with water from his boiler, took the rest of the train on to Bhusaval, a station 8 miles distant. There not being appliances at Varangaum for extinguishing fires, the remaining 72 bales continued to burn in the waggon till completely consumed. While the bales were being burnt communications passed between the Varangaum and Bhusaval Station Masters as to the sending from Bhusaval of appliances to put out the fire. At 4-10, the Station Master at Varangaum telegraphed to the Station Master at Bhusaval to send a fire-pipe to put out the fire as it was burning very badly. This message was

**RAILWAY**—*contd.*

received at Bhusaval at 4-30 P.M During the day the Station Master at Varangaum sent several practice messages asking for assistance from Bhusaval and also sent a further telegram which was received at Bhusaval about 8-30 P M.—"Fire pump not sent yet, half the bales burnt, strong wind blowing, fire in great force, arrange sharp" The Station Master at Bhusaval did not send any assistance whatever. He made inquiries as to how far water was from the fire and on receiving the information that the nearest water was in a well some 200 yards from the fire and some 25 feet from the surface, came to the conclusion that the appliances at Bhusaval Station would be ineffective. In fact the nearest well was some 200 yards from the fire but only some 53 feet from the nearest point on a siding to which the waggon containing the bales could have been brought. After the fire the defendants notified the plaintiffs that the 90 bales had been burnt, but afterwards offered to give delivery to the plaintiffs of 37 bales, slightly damaged, but the plaintiffs refused to accept delivery of the bales and subsequently they were sold by the defendants for the sum of Rs 3,210 The plaintiffs sued the defendants to recover the value of the 90 bales No cause of the fire could be shown and no definite act of negligence on the part of the servants of the defendants or other default on their part prior to the discovery of the fire was proved. *Held,* that the responsibility of the defendants for the loss, destruction or deterioration of goods delivered to them to be carried by them was, as provided by s 72 of the Railways Act IX of 1890, that of a bailee under ss 151, 152 and 162 of the Contract Act, and that s 76 of the Railways Act did not extend the principles contained in s 9 of the Carriers Act, 1865, to suits against Railway Companies and did not increase the onus of proof laid on the defendants under s. 151 of the Contract Act, namely, to take as much care of the goods bailed to them as a man of ordinary prudence would under similar circumstances take of his own goods of the same bulk, quality, and value as the thing bailed, but that in the absence of special contract the defendants were not responsible for the loss, destruction and deterioration of the goods if they had taken that amount of care. *Held,* further, that the defendants had exonerated themselves *quo ad* the outbreak of the fire. *Held,* however, that the obligation on the defendants included not only the duty of taking all reasonable precautions to obviate risks, but the duty of taking all proper measures for the protection of the goods when such risks had actually occurred and that the defendants' servants had been guilty of default, the Station Master at Bhusaval in not having sent appliances to extinguish the fire when requested by the Station Master at Varangaum, and the Station Master at Varangaum in having misled the Station Master at Bhusaval as to the distance of water from the fire, and that the defendants had not taken the care a reasonable man would take to save his goods. *Held,* accordingly, that the defendants were liable to the plaintiffs

**RAILWAY**—*concld.*

to the extent of the damage which they might have prevented on the discovery of the fire. LAKHICHAND RAMCHAND *v.* G. I. P. RAILWAY COMPANY (1911) . . **I. L. R. 37 Bom. 1**

**RAILWAY PREMISES.**

——— right to enter upon—

*See* PENAL CODE (ACT XLV OF 1860), S. 188 . . **I. L. R. 35 All. 136**

**RAILWAY RECEIPT.**

——— production of—

*See* DISHONESTLY RECEIVING STOLEN PROPERTY . **I. L. R. 40 Calc. 990**

**RAILWAYS ACT (IX of 1890).**

——— **s. 72** (2) (*b*)—*Risk-note, Form B—Shortage in contents of consignments, suit for damages for, if lies—Exception in regard to loss of whole consignment or package, if applies.* Where several tins of *ghee* consigned for carriage by the defendant Railway Company upon special terms as to rates and liability contained in a risk-note, Form B, were found on arrival to have been cut open and there was a shortage in their contents · *Held*, that the loss was covered by the risk-note and the Company was not liable—the exception with regard to loss of a whole consignment or one or more packages out of a consignment not being applicable to the present case where all the packages arrived but with a deficiency in the contents of some of them. EAST INDIAN RY. CO *v.* SHIV PROSAD BHAKAT (1912). **17 C. W. N. 529**

——— **ss. 77, 140**—*Goods delivered in damaged condition—Notice of claim—Service on Traffic Manager, if sufficient—Suit for damages—Maintainability.* Serving a notice of claim in respect of goods delivered by a Railway Company in a damaged condition on the Divisional Traffic Manager of the Company is, in the absence of authority given by the Agent of the Company to the Divisional Traffic Manager, not a sufficient compliance with the provisions of s. 140 of the Railways Act. *Nadiar Chand Saha* v. *Wood, I. L. R. 25 Calc. 194*, followed *Woods* v. *Meher Ali Bepari, 13 C. W. N. 24*, explained and distinguished EAST INDIAN RAILWAY COMPANY *v.* MADHO LAL (1913) **17 C. W. N. 1134**

——— **s. 101**—*General Rules 99* (*c*), *100—Breach of the rules—Endangering the safety of persons—Disregard of the rules by the station master—Fouling the line for which line clear is given—Driver of the approaching train disregarding danger signals and rushing into the derailed waggon on the line—Liability of the station master.* The accused, a station master, received an up goods train on the third line in his station yard He then ordered the driver of the goods train to detach his engine and shunt 9 waggons which was standing on the loop line to a dead end siding in order to make room for the down mail. At that time the next station on the other side asked the accused for line clear in order to pass an up passenger train, which the accused gave at once. The 9 waggons were shunted from the loop to the main line, and while they were being taken from the main line to the dead end siding, one of the waggons got derailed at the points where the siding joined the main line. At this time the distant and home danger signals were up against the up passenger train. Still the driver of that train disregarded both signals, and dashed into the derailed waggon, causing some injury to two of the passengers and the guard. The station master was tried under s 101 of the Indian Railways Act (IX of 1890) for breach of Rules 99 (*c*) and 100 of the General Rules The trying Magistrate acquitted the accused on the ground that it was the act of the driver of the up passenger that was immediately responsible for the collision. The Government having appealed :—*Held*, setting aside the order of acquittal, that the disregard by the accused of r 100 enhanced the danger to passengers ; and it was the risk thus entailed which rendered the rule-breaker liable to punishment. *Held*, also, that as regards the punishment, the gravity of the offence should be estimated not by the actual ultimate consequence but by the risk involved, for the rule-breaker might be punished even though no accident occurred. EMPEROR *v.* RAMCHANDRA HARI (1913). **I. L. R. 37 Bom 685**

**RAILWAYS ACT (IX OF 1890)**—*concld.*

——— **s. 101**—*concld.*

——— **s. 140**—*Notice of suit, upon whom to be served.* Under s. 140, Indian Railways Act (IX of 1890), notice of suit against a Railway Company can only be served upon the Agent unless it can be shown by evidence that some other officer of the Company had authority to receive the notice. SESHACHELLAM CHETTY *v.* TRAFFIC MANAGER, NIZAM'S GUARANTEED STATE RAILWAY (1913) **I. L. R. 36 Mad. 65**

**RATEABLE DISTRIBUTION.**

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), SS. 276, 295 **I. L. R. 37 Bom. 138**

——— *Deposit by Judgment-debtor—Civil Procedure Code (Act V of 1908), O. XXI, r 89, and s 73—Alteration in s. 73, effect of* When money is paid into Court under O. XXI, r. 89, of the Civil Procedure Code, 1908, there can be no rateable distribution under s. 73 of the Code. The scope of s. 73 of the new Code of Civil Procedure (Act V of 1908) is far wider than that of s. 295 of the old Code (Act XIV of 1882), yet the effect of the enactment in s. 310A of the old Code, which is reproduced in O XXI, r 89, of the new Code, remains unaltered. HARAI SAHA *v* FAIZLUR RAHMAN, (1913) . **I. L. R. 40 Calc. 619**

**RECEIPT.**

*See* STAMP ACT (II OF 1899), SS. 2 (*23*), 62, 63 . **I. L. R. 35 All. 290**

**RECEIVER.**

1 ——— *Insolvency—Jatri or "Pilgrim-business," profits from—Priest, office of*

**RECEIVER**—*contd.*

—*Provincial Insolvency Act (III of 1907), ss. 2(1)(g), 18, 20 (c), 40 (1), 44, 47*—"*Business*"—"*Trade.*" Where, pending an appeal to the High Court by a creditor in insolvency against a conditional order of discharge in favour of the insolvent who was a *panda* or priest attached to the temple of Jagannath at Puri, an application was made for the appointment of a receiver in respect of the business of the insolvent, which consisted in receiving pilgrims, housing them, feeding them, looking after their comfort, and accompanying them to the temple of Jagannath, in return for a fee from the said pilgrims in the nature of a voluntary payment, the object of the creditor being not to stop the business but to carry it on, so that the insolvent priest may be constantly attended by the receiver, who may take possession of all his earnings: *Held*, that what the priest did for the pilgrims could not appropriately be described as "business" within the meaning of clause (*c*) of s. 20 of the Provincial Insolvency Act; and that the exercise of his calling by the insolvent, under the circumstances stated, could not be deemed a "trade" within the meaning of sub-s (*1*) of s. 40 of the Provincial Insolvency Act. *Held*, also, that ordinarily the business of the insolvent might be carried on by the receiver not with a view to profit, but only in so far as might be necessary for the beneficial winding up of the same *Ex parte Emmanuel, 17 Ch. D. 35*, followed The difference between a receiver and a manager explained *In re Manchester and Milford Railway Co., 14 Ch. D. 645, Moss Steamship Co.* v *Whinney*, [*1912*] *A. C 254. In re Leas Hotel*, [*1902*] *1 Ch. 332, Boehm* v. *Goodall*, [*1911*] *1 Ch. 155*, and *In re Newdigate Colliery, Ld.*, [*1912*] *1 Ch 468*, referred to. ANAND MAHANTI *v.* GANESH MAHESWAR (1913)
**I. L. R. 40 Calc. 678**

**2.** ——— *Appointment of receiver—Civil Procedure Code (Act V of 1908), O. XL, r. 1—Powers of Civil Court when Receiver in possession under s. 146 (2), Criminal Procedure Code (Act V of 1898)—Conditional appointment—Former Receiver, reappointment of.* The appointment of a receiver by a Civil Court under O XL, r. 1 of the Code of Civil Procedure, does not operate as a discharge of the receiver of the same properties already appointed by a Magistrate under s 146 (2) of the Code of Criminal Procedure. As a general rule when there is a receiver in possession appointed by the Magistrate, and application is made to the Civil Court to exercise its powers under O XL, r. 1 of the Code of Civil Procedure, the Civil Court should make a conditional order of appointment and inform the Magistrate so that the latter may have an opportunity of withdrawing his attachment. Unless there is good reason to the contrary, the Civil Court should, as a matter of judicial discretion, appoint as its receiver the person already appointed by the Magistrate. *Barkat-unnissa* v. *Abdul Aziz, I. L. R. 22 All. 214*, distinguished. BIDYAPRASAD NARAIN SINGH *v.* ASHRAFI SINGH (1913) . . **I. L. R. 40 Calc. 862**

**RECEIVER**—*concld.*

**3.** ——— *Appointment of—Discretion of Court—Interference by higher Court—Appointment of party to cause appointment of person residing outside jurisdiction and at a distance—Revision—Guardians and Wards Act (VIII of 1890), s. 12, sub-s. (1).* The selection and appointment of a particular person as a Receiver is a matter of judicial discretion to be determined by the Court according to the circumstances of the case, and the exercise of this, like other matters of judicial discretion, will rarely be interfered with by an appellate tribunal To induce the Appellate Court to interfere it is necessary to show some overwhelming objection in point of propriety or some fatal objection in principle to the person named. It is a settled rule that one of the parties to a cause shall not be appointed Receiver without the consent of the other party unless a very special case is made. Residence beyond jurisdiction is not by itself a fatal objection, but when a non-resident is appointed Receiver, there must be adequate guarantee that he will be subject to the effective control of the Court. Residence at a great distance from the property which is to be subject to his management and control, while not regarded as an absolute disqualification for the office, is an important circumstance to be taken into consideration Where amongst two rival claimants for appointment as guardian of a minor's property, the appointment of one by the District Judge was set aside on the ground of irregularities, and the District Judge was asked to reconsider the matter and the District Judge, pending trial, appointed the same individual Receiver under sub-s (*1*) of s. 12 of the Guardians and Wards Act, although he was a resident outside the Judge's jurisdiction and no security was taken from him: *Held*, in revision, that the appointment was bad and should be set aside. KALI KUMARI *v.* BACHHAN SINGH (1913) . . . **17 C. W. N. 974**

**4.** ——— *Appointment of, pending proceeding for appointment of Common Manager—Bengal Tenancy Act (VIII of 1885), ss. 93-100—Fit case for appointment—Selection of Receiver, High Court, when will interfere with—Civil Procedure Code (Act V of 1908), O. XL, r. 1.* The fact that an application for the appointment of a Common Manager of the property in suit is pending before the District Judge, does not preclude the Subordinate Judge before whom the suit is pending from appointing a Receiver in a proper case. *The Eastern Mortgage and Agency Co.* v. *Rakea Khatun, 16 C. W. N. 997*, followed. Where it was common ground that no one was in effective possession of the property and in a position to collect the rents and pay the Government revenue, the Court could hardly go wrong in appointing a Receiver. The trying Courts' selection of a Receiver will not be set aside in appeal except in an extreme case, *i.e.*, unless there be some overwhelming objection in point of propriety or choice or some fatal objection in principle. *Cookes* v. *Cookes, 2 DeG. J. & S. 526*, followed. JIBANESSA KHATUN *v.* MAJIDUNNESSA KHATUN (1913) . . . . **17 C. W. N. 581**

**RECEIVER PENDENTE LITE.**

*See* RELIGIOUS TRUST.
I. L. R. 40 Calc. 251

**RECISION OF CONTRACT.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 95 . I. L. R. 37 Bom. 158

**RECITAL.**

*See* EVIDENCE . I. L. R. 35 All. 194

**REDEMPTION.**

*See* MORTGAGE . I L. R. 35 All. 48; I. L. R. 36 Mad 426

**REDEMPTION OF MORTGAGE.**

——— extension of time for—

*See* CIVIL PROCEDURE CODE, 1908, O. XXXIV, R. 8 . I. L. R. 35 All. 116

**REFERENCE BY COLLECTOR OF RANGOON.**

*See* APPEAL TO PRIVY COUNCIL
I. L. R. 40 Calc. 21

**REFERENCE BY COURT.**

*See* BOOKS OF REFERENCE.
I. L R. 40 Calc 898

**REFUND OF COURT-FEE.**

——— *Appeal, over-valuation of—Partial decree—Memorandum of appeal, over-valuation of—Court-fee paid in excess by inadvertence—Practice.* The appellant's agent having, by inadvertence, over-paid court-fee on the memorandum of appeal, the High Court directed the Taxing Officer to issue the necessary certificate to enable the appellant to obtain a refund of the excess court-fee from the Revenue authorities. *In the matter of Grant, 14 W. R. 47*, referred to. HARIHAR GURU *v.* ANANDA MAHANTY (1912)
I L. R. 40 Calc. 365

**REFUSAL TO GRANT TIME.**

*See* ATTACHMENT I. L. R. 40 Calc. 105

**REGISTERED AND UNREGISTERED DOCUMENTS.**

*See* REGISTRATION ACT (XVI OF 1908), S. 50 . . I. L. R. 35 All 271

**REGISTERED LEASE.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 110, 116.
I. L. R. 37 Bom. 656

**REGISTRATION.**

*See* REGISTRATION ACT (III OF 1877).

*See* REGISTRATION ACT (III OF 1877), S. 17 (*n*) . . I. L. R. 35 All. 202

*See* REGISTRATION ACT (XVI OF 1908).

*See* REGISTRATION ACT (XVI OF 1908), SS, 31, 32, 52 AND 87.
I. L. R. 35 All. 34

**REGISTRATION**—*concld.*

*See* REGISTRATION ACT (XVI OF 1908), S. 32 . . I. L R. 35 All 72

*See* REGISTRATION ACT (XVI OF 1908), S. 32 . I. L. R. 35 All. 134

——— *Gift—Consent of donor to registration of deed of gift of immovable property not essential to validity of gift. Held*, that it is not essential to the validity of a gift of immovable property that registration of the deed by which such gift is effected should be either at the instance of or with the consent of the donor. *Ramamirtha Ayyan* v. *Gopala Ayyan, I. L R. 19 Mad. 433*, dissented from. PARBATI *v.* BAIJ NATH PATHAK (1912) . . . . I. L. R. 35 All. 3

**REGISTRATION ACT (III OF 1877).**

——— s. 17, cl. (*i*)—

*See* RES JUDICATA
I. L. R. 36 Mad. 46

——— s. 17 (*n*)—*Mortgage—Agreement to relinquish portion of principal and all interest—Acknowledgment—Registration Held*, that an agreement executed by a mortgagee after the date of the mortgage whereby he relinquished a certain part of the principal and all interest, past and future, on the mortgage in lieu of certain services rendered by the mortgagor to the mortgagee was a document which required registration to make it admissible in evidence, and it could not be said to be an acknowledgment of payment within the meaning of the exception contained in s. 17, clause (*n*), of the Indian Registration Act, 1877. GOBARDHAN SAHI *v.* JADUNATH RAI (1913)
I. L. R 35 All. 202

——— ss. 17 (*b*) (*c*) and 49—

*See* TRANSFER OF PROPERTY ACT (IV OF 1882), S 54 . I. L. R 37 Bom. 53

——— s. 21—*Registration—How far a misdescription of property comprised in a deed may invalidate registration.* Where one of several villages comprised in a registered mortgage deed was described as being in a wrong *tappa*, the description being, notwithstanding this error, sufficient for identification, it was *held* that the misdescription was not sufficient to invalidate the mortgage as regards the village in question. *Beni Madho Singh* v. *Jagat Singh, 10 All L J. 33*, referred to. PARSOTAM DAS *v.* PATESRI PARTAB NARAIN SINGH (1913) . I. L. R. 35 All. 250

——— s. 77—*Suit for registration of a document—Limitation—Order striking off a case for compulsory registration of a document—Review—Final order refusing to register—Period of thirty days when to run from.* Where the plaintiff applied to the Registrar for compulsory registration of a deed of sale and the case was struck off, but on the plaintiff's application for review the case was restored and the Registrar after taking evidence on both sides made his final order refusing to register the deed, and the plaintiff instituted a suit in the Civil Court under s. 77 of the Registration Act

**REGISTRATION ACT (III OF 1877)—** *contd.*

——— s. 77—*concld.*

within 30 days from the date of this order. *Held*, that the final order of the Registrar made after the restoration of the case was the order of refusal in respect of which the plaintiff was entitled to institute a suit in the Civil Court and the plaintiff's suit was not barred by limitation SHEIK SAJED *v.* SARADA PORSAD CHAUDHURY (1913) **17 C. W. N. 585**

**REGISTRATION ACT (XVI OF 1908).**

——— ss. 17 (*b*), 49—*Document compulsorily registrable—Assignment of decree for sale of immovable property. Held*, that a deed of assignment of a final decree for the sale of mortgaged property under O XXXIV, r 5, of the Code of Civil Procedure, 1908, is not a document which is compulsorily registrable under the provisions of s 17 (*b*) of the Indian Registration Act, 1908. *Gopal Narayan* v *Trimbak Sadashiv, I L R 1 Bom. 267*, and *Mutasaddi Lal* v *Muhammad Hanif, 10 All. L J 167*, distinguished *Abdul Majid* v. *Muhammad Faizullah, I L R 13 All 89*, and *Baij Nath Lohea* v. *Binoyendra Nath Palit, 6 C W. N 5*, followed MUMTAZ AHMAD *v* SRI RAM (1913) . . **I. L. R 35 All. 524**

——— ss. 31, 32, 52, 87—*Registration*—"*Presentation*"—*Presentation by a person not an authorized agent of the executant—Procedure—Invalid presentation not a mere question of procedure.* Where a document is presented for registration by a person not duly authorized to present it according to the law applicable to registration of documents, such presentation is altogether invalid, and its subsequent registration, made upon the admission of the executant before an officer who had no jurisdiction to accept the document for registration, is likewise invalid *Mujib-un-nissa* v *Abdur Rahim, I. L R 23 All 233*, followed. KHALIL-UD-DIN AHMAD *v* BANNI BIBI (1912) **I L. R. 35 All. 34**

——— s. 32—

1. ——— "*Presentation*"—*Presentation by a servant of the mortgagor in the presence of the mortgagor* Where a mortgage deed was handed over to the sub-registrar for the purpose of registration by a person other than the mortgagor, but the mortgagor was present assenting to the registration of the document with full knowledge of what was being done in the office of the sub-registrar: *Held*, that the presentation was a valid presentation within the meaning of s 32 of the Registration Act *Nath Mal* v. *Abdul Wahid Khan, I. L R. 34 All 355*, followed. *Mujib-un-nissa* v. *Abdur Rahim, I. L. R. 23 All. 233*, distinguished *Jambu Prasad* v. *Aftab Ali Khan, I. L. R. 34 All 331*, not followed KARTA KISAN *v* HARNAM CHAND (1912) **I. L. R. 35 All. 72**

2. ——— *Registration*—"*Presentation*"—*Physical delivery of document by person not authorized to* "*present*" *it, but executant present and assenting whilst registration was going on.* Where it is shown that, prior to the registration of the document by the duly authorized official, a person competent to present the document for registration was present before that official assenting to the registration, the requirements of the Registration Act are sufficiently complied with. *Mujib-un-nissa* v. *Abdur Rahim, I L. R 23 All. 233*, and *Karta Kishan* v. *Har Narain, I. L. R 35 All 72*, referred to ATMA RAM *v.* UGRA SEN (1912) . . **I. L. R 35 All. 134**

**REGISTRATION ACT (XIV OF 1908)—** *concld.*

——— s. 32—*concld*

——— s. 50—*Registered and unregistered documents—Priority—Effect on rights of prior unregistered mortgagee of sale in execution of a decree on a subsequent registered mortgage* When property is sold in execution of a decree on a subsequent registered mortgage taking priority over a prior unregistered mortgage, such sale does not have the effect of invalidating the prior mortgage or of extinguishing altogether the rights of the mortgagee thereunder, but his debt would still be recoverable from the surplus, if any, left after the satisfaction of the registered mortgage DHANPAL SINGH *v* BUDH SINGH (1913) **I. L. R. 35 All. 271**

**RE-GRANT OF LAND.**

*See* LAND REVENUE CODE (BOM ACT V OF 1879, AS AMENDED BY BOM. ACT VI OF 1901), s. 56 **I L. R 37 Bom. 692**

**REGULATION (VIII OF 1793).**

——— ss. 54, 55—

*See* ABWAB . **I. L. R. 40 Calc. 806**

**REGULATION (XXV OF 1802)**

*See* IMPARTIBLE ZAMINDARI **I. L. R. 36 Mad. 325**

**REGULATION (MADRAS). XXV OF 1802**

——— *Impartible estate, proof of—Sanad granted under Madras Reg. XXV of 1802 in common form, if alters succession—Impartibility, proof of—Raj, estate whether—Question of fact—Concurrent findings—Appeal to Privy Council—Practice.* The zamindari of Nidadavole was the subject of a *sanad* in common form under Reg. (Mad.) XXV of 1802: *Held*, that it must be held to be partible and descendible according to the ordinary rules of inheritance of the Hindu Law unless the *sanad* could operate as a confirmation of a previously existing estate which from its nature or by virtue of some special family custom, was impartible and descendible to a single heir. Whether or not at or prior to the date of the *sanad* the grantee of the *sanad* had an estate in the nature of a Raj and so descendible to a single heir was a question of fact to be determined on the evidence. Where on such a question there were concurrent findings of the Courts in India,

**REGULATION (MADRAS), XXV OF 1802—*concld.***

the practice of the Privy Council was not to disturb the finding unless they were satisfied that it was not justified by the evidence. The principles applicable in determining the questions of impartibility in cases of this description re-affirmed. VENKATARAMAYYA APPA ROW *v.* PERTHASARATHY APPA ROW (1913) . . **17 C. W. N. 1221**

**REGULATION (VII OF 1822).**

——— *Settlement proceedings under Reg. VII of 1822, read with Reg. IX of 1825—Raiyati land held by Settlement Officer to belong to defendant's and not to plaintiff's holding—Decision if "award"—plaintiff's suit to recover—Limitation—Limitation Act (XV of 1877), Sch. II, Arts. 14, 46—Tenant, if may sue to recover from person with whom land settled by landlord and by whom he has been dispossessed.* Where a Collector in settling land under Reg. VII of 1822 decided that a certain area of land did not form part of the plaintiffs' holding as alleged by them, but was part of the defendants' holding: *Held*, that the decision of the Collector was not an award within the meaning of Art 46 of Sch II of the Limitation Act of 1877. *Held*, further, that an order by which land belonging to the paintiffs was given by the Collector to others without any warrant of law need not be set aside by the plaintiffs and Art. 14 of Sch. II of the Limitation Act does not apply to a suit by the plaintiffs to recover the land. It was not intended by the provisions of Reg VII of 1822 that the Collector should decide disputes as to title between raiyats in which the zemindars or *sadar malguzars* had no interest and which could in no way affect the assessment. S. 14 of the Regulation does not apply to a case in which rival tenants claim, not only a tenancy of the same nature, but the same land under the same nature of tenancy. The decision in *Binad Lal Pakrashi* v. *Kalu Pramanik, I. L. R. 20 Calc. 709*, was never intended to be applied to a tenant seeking to recover his own holding. RAJANI KANT MUKERJI *v.* RAM DULAL DAS (1911) **17 C. W. N. 55**

——— **ss. 7, 9.**—*Rent, enhancement of—Settlement officer, powers of—Jamabandi.* Where a settlement was carried out under Reg. VII of 1882. *Held*, that the Settlement Regulation did not authorise the settlement of fair rents. All that the Settlement Officer was entitled to do was to record the existing rent. ISHUR CHANDRA SARKAR *v* TROYLUKHYA NATH SINGHA (1913) **17 C W. N. 865**

**REGULATION (VI of 1831).**

*See* PENSIONS ACT (XXIII OF 1871) **I. L. R. 36 Mad. 559**

**REGULATION (IX OF 1833).**

——— **ss. 20, 21—**

*See* COLLECTOR **I. L. R. 40 Calc. 465**

**RELATIONSHIP.**

——— evidence of—

*See* HINDU WIDOW. **I. L. R. 40 Calc. 555**

**RELIGIOUS ENDOWMENT.**

*See* PARTIES . **I. L. R. 40 Calc. 323**

*See* RES JUDICATA. **I. L. R. 37 Bom. 224**

**RELIGIOUS ENDOWMENTS ACT (XX OF 1863).**

——— s. 14—

*See* PARTIES . **I. L. R. 40 Calc. 323**

**RELIGIOUS TRUST.**

*See* TRUST . **I. L. R. 40 Calc. 232**

——— *Deed of endowment—Sole shebait—Appointment of new shebait in case of death—Appointment how to be made—Receiver pendente lite.* Trusts will not be allowed to fail for want of a trustee, and, consequently, if the nominee dies before qualifying or afterwards, the Court will appoint a trustee. *In re Orde, 24 Ch. D. 271, Re Ambler's Trust, 59 L. T. N. S. 210, Gunson* v. *Simpson, L R. 5 Eq. 332, In re Smirthwaite's Trusts, L R. 11 Eq. 251*, referred to. Where a *shebait* is dead and there is no provision in the deed of endowment about the mode in which the office is to be filled up, the Court will not read into the deed of endowment a provision for appointment to the office of *shebait* which is not to be found therein. It becomes incumbent upon the representatives of the founders to make an appointment to the office of *shebait*, and upon failure to do so the Court has power to appoint a new trustee, and will exercise this power whenever there is a failure of a suitable person to perform the trust either from original or supervenient disability to act. *Sital Dass Babaji* v. *Protap Chandra Sarma, 11 C. L. J. 2*, referred to. The appointment of a fit and proper person to be a new trustee is not a matter of arbitrary discretion of the Court. The appointment must be made subject to well known and defined rules. *In re Tempest, L. R. 1 Ch. App. 485*, referred to. Where a receiver appointed *pendente lite* was directed by the subordinate Judge to continue to manage the properties on the scheme laid down in the deed of endowment, pending an agreement between the parties to appoint a *shebait*: *Held*, that the proper course to follow was, either to dismiss the suit, or, if the parties so desired, to appoint a *shebait* and place the properties in his hands. This latter order could be properly made only after amendment of the prayer in the plaint. RAJ KRISHNA DEY *v.* BIPIN BEHARY DEY (1912) **I. L. R. 40 Calc. 251**

**RELINQUISHMENT OF SERVICE.**

*See* MASTER AND SERVANT. **I. L. R. 35 All. 132**

**REMAND**

*See* CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23; O. XLIII, R. 1 (*u*).
**I. L. R. 35 All. 427**

*See* CIVIL PROCEDURE CODE, 1908, O. XLI, R. 23. **I. L. R. 36 Mad. 492**

*See* CIVIL PROCEDURE CODE, 1908, O. XLI, R. 33.
**I. L. R. 37 Bom. 289**

——— plea of limitation taken on—

*See* ACCOUNT, SUIT FOR.
**I. L. R. 40 Calc. 108**

**REMOVAL OF CASTE DISABILITIES ACT (XXI OF 1850).**

*See* HINDU LAW—JOINT FAMILY.
**I. L. R. 40 Calc. 407**

——— s. 1.—

*See* HINDU LAW—WIDOW.
**I. L. R. 35 All. 466**

**RENT.**

*See* LANDLORD AND TENANT.
**I. L. R. 35 All. 19**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 110 . **I. L. R. 36 Mad 438**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ARTS 110, 116.
**I. L. R. 37 Bom. 656**

**RENT, SUIT FOR.**

*See* AGRA TENANCY ACT (II OF 1901), S. 34 . **I. L. R. 35 All. 512**

*See* JURISDICTION OF CIVIL COURT, S. 34 . **I. L. R. 40 Calc 402**

1. ——— *Private lands—Madras Estates Land Act (I of 1908), ss. 3 (10), 19 and 189.* A revenue Court has no jurisdiction to try a suit for rent of private lands as defined in s. 3 (*10*) of the Madras Estates Land Act (I of 1908); such a suit must be brought in a civil Court. RAJA APPA RAO BAHADUR *v.* NAGANNA (1913) . . . . **I. L. R. 36 Mad. 7**

2. ——— *Evidence, admissibility of—Previous decree for rent obtained by a co-sharer if relevant on the question of rent—Res inter alios acta.* Where a tenant holds lands under several landlords under one contract of tenancy, and each co-sharer claims to collect rent proportionately to his share, a decree for rent obtained in a previous suit by one co-sharer is relevant for the determination of the question of the rate of rent in a subsequent suit for rent by another co-sharer who was joined as a *pro formâ* defendant in the former suit *Ram Ranjan* v. *Ram Narain, I. L. R. 22 Calc. 533; Tepu Khan* v. *Rajani Mohun Das, I. L. R. 25 Calc 522,* and *Abdul Ali* v. *Raj Chandra Das, 10 C. W. N. 1084,* referred to. RAMADIN RAI *v.* DHUNWANTI KOER (1912)
**17 C. W. N. 1016**

**RENT DECREE.**

*See* EXECUTION OF DECREE.
**I. L. R. 40 Calc. 623**

**RENT RECOVERY ACT (BENG. VIII OF 1865).**

——— ss. 4, 5, 16—

*See* EXECUTION OF DECREE.
**I. L. R. 40 Calc. 623**

**RENT RECOVERY ACT (MAD. VIII OF 1865).**

——— ss. 9 and 10—

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 110 . **I. L. R. 36 Mad. 438**

**RENT RECOVERY ACT (VIII OF 1865).**

——— s. 11—

*See* PATTA . . **I. L. R. 36 Mad. 4**

**REPEAL.**

*See* CIVIL PROCEDURE CODE, 1908, O. XLI, R. 33.
**I. L. R. 37 Bom. 289**

*See* LIMITATION **I. L. R. 37 Bom. 231**

**REPRESENTATIVE IN INTEREST.**

*See* EVIDENCE **I. L. R. 40 Calc. 891**

**RE-PUBLICATION.**

*See* WILL . **I. L. R. 40 Calc. 192**

**RES JUDICATA.**

*See* CIVIL PROCEDURE CODE, 1908, S. 11.
**I. L. R. 35 All. 111**

*See* CIVIL PROCEDURE CODE, 1908, S. 11.
**I. L. R. 37 Bom. 172**

*See* CIVIL PROCEDURE CODE, 1908, S. 11 . . **I. L. R. 35 All. 187**
**I. L. R. 37 Bom. 307; 563**

*See* COMPANIES ACT, 1882, SS. 6, 40, 41.
**I. L. R. 40 Calc. 1**

*See* ENHANCEMENT OF RENT.
**I. L. R. 40 Calc. 29**

*See* LIMITATION ACT (XV OF 1877), S. 19 AND SCH II, ART. 148.
**I. L. R. 35 All. 227**

*See* REVIEW, APPLICATION FOR.
**I. L. R. 40 Calc. 541**

1. ——— *Compromised decree—Compromise also affecting land not in suit—Registration Act (III of 1877), s. 17, cl. (i)—Compulsory registration.* Where a compromise affected land not in suit and a decree was passed in terms of the compromise in so far as it related to the property sued for, to render the compromise available as a defence to a future suit as regards property not formerly sued for, it must have been registered in accordance with the provisions of the Registration Act (III of 1877), s. 17. If any portion of a *razinama* has not passed into a decreee or order of Court, it is *primâ facie* difficult to see how a recital of it in the proceedings of the Court or its inclusion in pleadings put before the Court will bring it within the operation of cl. (i) of

**RES JUDICATA**—*contd.*

s. 17 of Registration Act. *Bindesri Nark* v *Ganga Saran Sahu, I. L R. 20 All. 171,* and *Peranal Anni* v. *Lakshmi Anni, I. L. R. 22 Mad. 508,* explained *Natesa Chetty* v. *Vengu Nachiar, I. L. R. 33 Mad 102,* dissented from. *Jasimuddin Biswas* v. *Bhuban Jelin, I. L. R 34 Calc. 456,* distinguished. CHELAMANNA *v* RAMA RAO (1913)

**I. L. R. 36 Mad. 46**

**2.** ——— *Decision based on oath etc., effect of, as—Oaths Act (X of 1873), effect of* An adjudication by a Court on an oath made by one of the parties to the suit would make the matter or issue covered by the adjudication *res judicata* in a subsequent litigation between the same parties where the subject-matter of the suit is different. *Per* CURIAM The decision of any matter directly and substantially in issue in a former suit between the same parties, would none the less be *res judicata* because the decision was based on the oath of one of the parties or a witness in the former suit. The effect is similar to that of a decision of a Court based on a finding of an arbitrator or on a compromise between the parties In all these cases the decision is the decision of the Court and not of the arbitrator or the parties. SANYASI BARITYA *v.* ARTASWARO (1913)

**I. L. R 36 Mad. 287**

**3.** ——— *Land assigned to support religious service—Alienation by holder—Lease—Adverse possession—Limitation—Suit to recover possession of vatan land on the ground that the mortgage by the previous holder ceased to be effective on his death—Defence of tenancy for a term—Dismissal of suit—Subsequent suit to recover possession on the ground that the deceased holder had no right to alienate the land in any manner.* In the case of a lease for a term of years by the holder for the time being of lands assigned to support services rendered to a Makan and religious community by successive holders, time begins to run not from the commencement of the tenancy of the person claiming to hold as a tenant, but from the date when the claims of the parties became openly and undoubtedly adverse. *Tekait Ram Chunder Singh* v. *Srimati Madho Kumari, L R. 12 I. A 197* and *Trimbak Ramchandra* v. *Shekh Gulam Zilani, I. L. R. 34 Bom 329,* referred to. The plaintiff brought a suit on the ground that the alienation by way of mortgage of certain service vatan lands ceased to be effective on the death of the alienor, the previous holder The defendant contended that the document of alienation was a lease and not mortgage. The suit was dismissed on the ground that the plaintiff failed to establish his contention as to the character of the document upon which he had elected to go to trial In a subsequent suit, the plaintiff asserted that the lands in suit being Sarv-Inam continuable in the plaintiff's family in the succession of disciples, the plaintiff's deceased predecessor had no right and power whatever to pass in writing those lands by way of mortgage or lease or in any other manner so as to let the writing continue in force after his death. *Held,* that the subsequent suit was not

**RES JUDICATA**—*concld.*

maintainable owing to the bar of *res judicata.* The complaint in both the suits was the unlawful retention by the defendant of the lands after demand for delivery free of incumbrances. The matter of the retention of possession of the lands by defendants upon the terms asserted by him had been heard and finally decided in the first suit and could not be raised again *Woomatara Debea* v. *Kristokamini Dossee, 18 W. R. 163,* referred to. *Naro Balvant* v. *Ramchandra Tukdev, I. L. R. 13 Bom. 326,* distinguished. MAHAMADGAUS *v.* RAJABAKSHA (1912)

**I. L. R. 37 Bom. 224**

**4.** ——— *Estoppel—Inconsistent positions, litigants if should be permitted to take up—Mortgage by Hindu widow, suit on, for foreclosure—Reversioner joined as transferee, dismissed from suit on setting up title adverse to widow—Decree for foreclosure against widow—Suit by decree-holder to eject reversioner—Adverse title set up in defence—Suit decreed—Death of widow, suit by reversioner after, to recover, if lies* Where a Hindu widow B, who had executed a mortgage, was sued for foreclosure by the mortgagee who also joined in that suit *A,* alleging him to be the transferee of the equity of redemption, but *A* having in his written statement repudiated the mortgagor's title in the property and set up exclusive title in himself was dismissed from the suit, and the mortgagee got a foreclosure decree against *B,* but having been resisted when taking possession by *A,* sued *A* in ejectment and *A* again denied the mortgagor's title and set up his own title adversely to hers, and it was held in that suit that the mortgagor *B* was the sole exclusive owner of the property and that *A* had no title in it: *Held,* in a suit by *A,* brought after the death of *B,* to recover possession on the allegation, that he was the reversionary heir of a pre-deceased son of B, to whom *B* had succeeded as mother, that the suit was barred by *res judicata.* That *A* could not be allowed to take up inconsistent positions. BHAGARATHI DAS *v* BALESHUR BAGERTI (1913)

**17 C. W N. 877**

**RESTITUTION OF CONJUGAL RIGHTS.**

*See* CIVIL PROCEDURE CODE, 1908, s. 11.
**I. L. R. 37 Bom. 563**

*See* HUSBAND AND WIFE
**I. L. R. 37 Bom. 393**

**RESUMPTION.**

*See* VRITTI . **I. L. R. 37 Bom. 409**

**RETAINER.**

*See* BAR COUNCIL, RESOLUTIONS OF.
**I. L. R. 40 Calc. 898**

**RE-TRIAL.**

*See* ASSESSORS, EXAMINATION OF.
**I. L. R 40 Calc. 163**

*See* EVIDENCE ACT (I OF 1872), SS. 21, 81 . . **I. L. R 36 Mad. 457**

**RE-UNION.**

*See* HINDU LAW—PARTITION.
**I. L. R. 35 All. 41**

**REVENUE COMMISSIONER.**

*See* COMMISSIONER, POWER OF.
**I. L. R. 40 Calc. 552**

**REVENUE COURT.**

*See* JURISDICTION OF CIVIL COURT.
**I. L. R. 40 Calc. 402**

*See* PENSIONS ACT (XXIII OF 1871), S. 4 . . **I. L. R. 36 Mad. 559**

**REVENUE JURISDICTION ACT (X OF 1876).**

——— s. 4 (*a*)—

*See* HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 11, 11A
**I. L. R. 37 Bom. 37**

**REVENUE JURISDICTION ACT, BOMBAY (X OF 1876).**

——— ss 4 (*c*), 5 and 6—*Bombay Land Revenue Code (Bom. Act V of 1879), s. 140—Realization of land revenue—Attachment of goods by Mamlatdar—Suit against Mamlatdar for recovery of damages—No denial of the allegation that the goods belonged to plaintiff—Jurisdiction of Civil Courts—Delegation of the powers by the Collector for his own district.* S. 4 (*c*) of the Revenue Jurisdiction Act, Bombay (X of 1876), is not a bar to a suit in which there is a claim arising out of the alleged illegality of the proceedings taken for the realization of land revenue. Where the legality of the proceedings initiated by a revenue officer is in question, the Court has to inquire under s. 6 of the Act whether the act complained of was done *bonâ fide* by the officer in pursuance of the provisions of any law. The Mamlatdar in order to justify his acts under s. 140 of the Land Revenue Code (Bom. Act V of 1879), must show that the Collector of the District in which he is the Mamlatdar had delegated his powers. The Mamlatdar can only exercise delegated powers in the taluka in which the delegation occurred. The delegation by the Collector of any other District would not justify his act. GANGARAM HATIRAM *v.* DINKAR GANESH (1913)
**I. L. R. 37 Bom. 542**

**REVENUE REGISTER.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 118 . **I. L. R. 37 Bom. 513**

**REVENUE SALE LAW (ACT XI OF 1859).**

——— ss 6, 33—*Notification of sale publication in Government Vernacular Gazette, if necessary—Omission, if nullifies sale—Irregularity.* The publication of a notification of sale under s. 6 of Act XI of 1859 in the *Calcutta Gazette* only is a sufficient compliance with the provision of law requiring the publication of such notification in the "Official Gazette." Where such notification has been published in the *Calcutta Gazette*, publication thereof again in any of the Government Vernacular Gazettes is not required by law. If such publication in the Vernacular Gazettes were required by law, non-compliance with it would be an irregularity, and the provisions of s. 33 of the Act would apply RADHA CHARAN DAS *v.* SHARFUDDIN HOSAIN (1913) . **17 C. W. N. 1135**

**REVENUE SALE LAW (ACT XI OF 1859)**—*contd.*

——— s. 6—*concld.*

——— s. 13—*Sale for arrears of revenue, effect of—Collector, if can dismember revenue unit for realising arrears* Under the Bengal Land Revenue Sales Act, the Collector is entitled to sell a revenue unit in its entirety whether it be an estate or a share, and nothing less. He is not entitled to dismember the revenue unit for the purpose of realisation of arrears. GANGA PROSAD SINGH *v.* PARGASH SINGH (1912) . **17 C. W. N. 844**

——— s. 25—

*See* COMMISSIONER.
**I. L. R. 40 Calc. 552**

——— ss. 29, 37—*Sale of entire estate for arrears if ipso facto annuls incumbrances—Sale voidable at purchaser's option—Option how may be exercised—Annulment by notice—Mesne profits, claim for, when arises—Compensation for use and occupation* The sale of an entire estate for arrears of revenue does not *ipso facto* avoid incumbrances and under-tenures, but only renders them voidable at the option of the purchaser. The purchaser may elect to annul an under-tenure not only by institution of a suit, or by giving notice to vacate, but may indicate it by other means The delivery of possession by the Collector under s. 20 of Act X of 1859 does not convert under-tenure holders into trespassers The persons whom, in terms of that section, the Collector may remove in delivering possession must refer to the former proprietors or persons claiming proprietory right through them, and does not refer to under-tenure holders *Mir Wazirudin* v *Lala Deokinandan, 6 C L. J. 472*, refe red to. The purchaser is not entitled to mesne profits for the period antecedent to the exercise by him of his option of annulment. He is only entitled to compensation for use and occupation on the basis of the rent payable by the tenure-holder of the first decree. Where the under-tenure has been annulled by notice, the purchaser is entitled to claim mesne profits from the date on which the notice was expressed to expire. DURSAN SINGH *v.* BHAWANI KOER (1913)
**17 C. W. N. 984**

——— s. 36—*Suit against certified purchaser for specific performance of agreement to convey purchased property made before purchase—Maintainability.* The plaintiff who wished to purchase a mehal at a revenue sale requested the defendant to watch the sale and to offer bids, and the defendant agreed to do so and to convey the property to the plaintiff. Defendant bid for the property in plaintiff's absence, took one-fourth of the purchase money for deposit from the plaintiff and

**REVENUE SALE LAW (ACT XI OF 1859)**—*concld.*

——— **s. 36**—*concld.*

deposited the same, but refused to accept the balance of the purchase money from the plaintiff, and having procured the same from other sources took out a certificate in his own name. *Held*, that a suit by the plaintiff against the defendant for specific performance of the contract was maintainable, and s. 36 of Act XI of 1859 was no bar to it. MONMOTHA NATH PAL *v.* GIRISH CHANDRA RAY (1912) . **17 C. W. N. 75**

**REVERSIONER.**

*See* HINDU LAW—ALIENATION **I. L. R. 40 Calc. 721**

*See* HINDU LAW—WIDOW. **I. L. R. 35 All. 326**

——— **redemption by, after foreclosure decree—**

*See* MORTGAGE **I. L. R. 36 Mad. 426**

——— **right of several, independent—**

*See* LIMITATION ACT (IX OF 1908), S. 6, SCH. I, ART. 125. **I. L. R. 36 Mad. 570**

**REVIEW.**

*See* COMMISSIONER, POWER OF **I. L. R. 40 Calc. 552**

1. ——— *Application for review—Suit—Res judicata—Compromise decree.* An application for review is not a suit within the meaning of s 13 of the Code of Civil Procedure, 1882, and a decision of a question arising in an application for review cannot operate as constructive *res judicata*. *Gulab Koer* v. *Badshah Bahadur, 10 C. L. J. 420*, referred to. *Ram Gopal Majumdar* v. *Prasanna Kumar Samad, 2 C. L. J. 508*, distinguished. SRISH CHANDRA PAL CHOWDHRY *v.* TRIGUNA PRASAD PAL CHOWDHRY (1913) **I. L. R. 40 Calc. 541**

2. ——— *Vendor and purchaser—Conditions of sale, effect of—Title—Commissioner of Partition, sale by, not sale by Court—Rules and Orders of the High Court, r. 426, scope of.* Under an order of Court that he "be at liberty to sell" a Commissioner of Partition sold certain property by public auction. The conditions of sale, *inter alia*, stipulated that "there were no documents of title, except those mentioned in the abstract of title, that the purchaser should not be entitled to call for any other document, or to object to the title on the ground of the non-production thereof, and that no objection to the title should be allowed." The purchasers at the auction subsequently obtained an order of Court directing the Registrar to enquire and report under r. 426 as to the vendor's title. On an application for review of judgment: *Held*, that the review must be granted on the ground that the sale was not a sale by the Court. *Golam Hossein Cassim Ariff* v. *Fatima Begum, 16 C. W. N. 394*, and *Chandranath Biswas* v. *Biswanath Biswas*, *6 B. L. R. 4982* n, followed. The conditions of sale did not preclude the purchasers from raising the question of the vendor's title where it appeared (*i*) that the abstract of title commenced with a bond of indemnity which was in no sense a root of title; and (*ii*) that the abstract did not expressly disclose the nature of the title, or indicate that the property was subject to a permanent lease at a small rent. JOGEMAYA DASEE *v.* AKHOY COOMAR DAS (1912) . . **I. L. R. 40 Calc. 140**

**REVISION.**

*See* CRIMINAL PROCEDURE CODE, S. 195. **I. L. R. 35 All. 90**

*See* CRIMINAL PROCEDURE CODE, S. 439. **I. L. R. 35 All. 109**

*See* SANCTION FOR PROSECUTION. **I. L. R. 40 Calc. 239**

**REVIVAL OF PROCEEDINGS.**

*See* SANCTION FOR PROSECUTION. **I. L. R. 40 Calc. 584**

**REVOCATION.**

*See* LETTERS OF ADMINISTRATION **I. L. R. 40 Calc. 50**

*See* SANCTION FOR PROSECUTION. **I. L. R. 40 Calc. 423**

**RIGHT OF APPEAL.**

*See* APPEAL TO PRIVY COUNCIL. **I. L. R. 40 Calc. 21**

**RIGHT OF PRIVATE DEFENCE.**

*See* ASSESSORS, EXAMINATION OF. **I. L. R. 40 Calc. 163**

**RIGHT OF SUIT.**

1. ——— *Madras District Municipalities Act (IV of 1884)—Election as Municipal Councillor—Declaration of its invalidity by Collector under r. 36 of Election Rules—Civil Courts, no jurisdiction to question in—"Appointed by election" in s. 10—Meaning of "election."* An order of a Collector declaring the invalidity of an election of a candidate to a seat in a Municipal Council, passed under r. 36 of the Election Rules after enquiry and based on proper grounds (*i.e.*, those set forth in r. 35) and otherwise complying with the requirements of the rules framed under s. 250 of Madras Act IV of 1884 (District Municipalities Act), cannot be questioned in a civil suit; but is conclusive as far as the result of the election is concerned. *Bharshankar* v. *The Municipal Corporation of Bombay, I. L. R. 31 Bom. 604, 609*, followed. Maxwell on Interpretation of Statutes, 4th Edition, p. 197, referred to. *Vijaya Ragava* v. *The Secretary of State for India, I. L. R. 7 Mad. 466, Sabhapat Singh* v. *Abdul Gaffur, I. L. R. 24 Calc. 107, Lalbhai* v. *The Municipal Commissioner of Bombay, I. L. R. 33 Bom. 334*, distinguished. *Per* CURIAM: The status of a Municipal Councillor is the creation of s. 10 of Act IV of 1884, and the creation is subject, *inter alia*, to the conditions

**RIGHT OF SUIT**—*contd.*

imposed by the Election Rules framed by the Governor in Council under s. 250 of the Act and invested by clause (*3*) with the force of law. One of these rules in r 36, the election gives the candidate elected no vested status, as the election is liable to be declared invalid ; an invalid election can confer no status whatever. The words "appointed by election" in s 10 refer only to a valid election, *i.e.*, one which is not set aside under r. 36. *Semble :* If an order is passed without any enquiry at all or is based on grounds other than those set forth in r. 35, a suit would probably lie to set it aside as *ultra vires*. A suit for damages in consequence of an invalid order and a suit for a declaration of the validity of an election and an injunction stand on very different footings though based on the same facts. The former may be decreed, while the latter may not. NATARAJA MUDALIYAR *v.* THE MUNICIPAL COUNCIL OF MAYAVARAM (1913) . . **I. L. R. 36 Mad. 120**

**2.** ——— *Suit for exemption from land revenue, owner alone can bring suit for land, by A against B, ending in favour of A—Third parties cannot question —Res Judicata Civil Procedure Code, Act V of 1908, s. 13, not exhaustive.* A suit for a declaration that the land is not liable to assessment can be instituted only by the person entitled to it as owner. If a suit relating to ownership of the land, between two persons, has ended in favour of one of them, third parties having no interest in the land at the time of the litigation cannot, in the absence of any collusion or fraud on them, dispute the settlement of the dispute between them as to title, even for supposed want of jurisdiction ; and it is equally true that neither of the parties to the litigation can be permitted to aver as against third persons in the like position that the land belongs to himself and not to his opponent in the litigation. Second Appeal No. 574 of 1909, followed. Bigelow on Estoppel, 5th edition, 44, referred to. *Per* CURIAM The question does not depend upon the application of the doctrine of *res judicata* S. 13, Civil Procedure Code, does not cover all cases of estoppel by judgment. The suit was for a declaration that the defendant, the Secretary of State for India, was not entitled to levy any assessment on certain lands which the plaintiffs claimed as part of their *agraharam*. In previous suits by *B* against plaintiffs once for a declaration of title and afterwards for possession of the lands, the judgments were in favour of *B*. *Held,* (i) that the plaintiffs in the present suit cannot be permitted to prove as against the present defendant that they were the owners ; and (ii) that the suit was not maintainable. *Semble :* Even if the previous litigation had ended in favour of the present plaintiffs, the Government, though it would not be entitled to question the plaintiff's title, would not be bound to regard the land as exempt from revenue. RAMAMURTI DHORA *v.* SECRETARY OF STATE FOR INDIA (1913) . . . **I. L. R. 36 Mad. 141**

**3.** ——— *Transfer of property in consideration of transferee paying sums*

**RIGHT OF SUIT**—*contd.*

*to third parties—Failure of transferee to pay in reasonable time—Right of transferor to sue for same irrespective of damage.* If *A* transfers his property to *B* in consideration of *B* agreeing to pay certain sums to third person, *A* is himself entitled to sue *B* for the recovery of those sums as if they are due to him in case of *B*'s failure to pay the third persons within a reasonable time ; and *A* is not in such a case bound to show that he was in any way damnified by *B*'s failure. *Dorasinga Tevar* v. *Arunachalam Chetti*, *I. L. R. 23 Mad. 441*, *Runganadham* v. *Appala Naidu*, [*C. M. A. No. 119 of 1908* (unreported)], and *Gopala Ayyar* v. *Ramaswami Sastrigal*, [*S. A. No. 183 of 1907* (unreported)], followed. *Siva Subramania Mudaliar* v. *Gnanasambanda Pandara Sannadhi*, *21 Mad. L. J. 359*, *Chenchuramayya* v. *Subaramayya*, *9 Mad. L. T. 79*, *Dorasami Tevar* v. *Lakshmanan Chetty*, *14 Mad L. J. 284*, *Thangammai Nachiar* v. *Subbammal*, *16 Mad. L. J. 20*, *Putti Narayanamurthy Ayyar* v. *Mariumut Pillai*, *I. L. R 26 Mad. 322*, *Kumar Nath Bhuttacharjee* v. *Nobo Kumar Bhuttacharjee*, *I. L. R. 26 Calc. 441*, and *Izzat-un-Nissa Begam* v *Kunwar Pertab Singh*, *L. R. 36I. A. 203*, distinguished. *Subba Naidu* v. *Bathula Bee Bee Sahiba*, *8 Mad. L. T. 188*, referred to RAGHUNATHA *v.* SADAGOPA (1913) . . . **I. L. R. 36 Mad. 348**

**4.** ——— *Acquisition of inam land by Government for municipal purposes. Madras District Municipalities Act (IV of 1884), s 279, effect of—Sale by Municipalities—Imposition by Government of ground-rent on occupier—Ground-rent, liability to pay—G. O. No 210 of 20th February 1889, effect of—Exemption from ground-rent, to be express.* Even an inam land which is subject only to a quit-rent becomes, when acquired by Government under the Land Acquisition Act, ordinary Government land liable to assessment in the hands of any person who might afterwards become the occupier whether deriving his title directly from the Government or from a Municipality which after such acquisition by the Government becomes owner under s. 279 of the Madras District Municipalities Act (IV of 1884) by payment of the amount settled as compensation. Acquisition is only by the Government and not by the Municipality hence the previous inamdar's right to exemption from assessment does not rest in the Municipality. A transferee from the Municipality of such land cannot therefore claim as against the Government exemption from assessment. A person who claims exemption from the payment of such assessment as the Government may fix, must show some grant exempting him from the payment of the ordinary assessment. No exemption can be claimed without a grant or exemption in express words. Effect of G. O. No. 210, dated 20th February 1889, permitting Municipal Councils to transfer lands vested in them by sale, mortgage or otherwise, was not to exempt the transferees from ordinary assessment that might be imposed but was only to remove all objection to the transfer on the ground

**RIGHT OF SUIT**—*concld.*

that the transferor is a Municipal Council. HANUMANLU *v.* SECRETARY OF STATE (1913) I. L. R. 36 Mad. 373

**"RING" GAME.**

*See* OSTENSIBLE MEANS OF SUBSISTENCE I. L. R. 40 Calc. 702

**RIOTING.**

*See* ASSESSORS, EXAMINATION OF. I. L. R. 40 Calc. 163

*See* CHARGE . I. L. R. 40 Calc. 168

*See* CUMULATIVE SENTENCES. I. L. R. 40 Calc. 511

*See* JURY, TRIAL BY. I. L. R. 40 Calc. 367

**ROADS.**

*See* BHAGDARI VILLAGE. I. L. R. 37 Bom. 87

**RULES AND ORDERS OF HIGH COURT.**

——— r. 426—

*See* REVIEW . I. L. R. 40 Calc. 140

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**SALE.**

*See* CONTRACT ACT (IX OF 1872), S. 11. I. L. R. 35 All. 370

*See* EXECUTOR, SALE BY. I. L. R. 36 Mad. 575

*See* MORTGAGE . I. L. R. 40 Calc. 534

——— *Covenant for title—Claim made against purchaser compromised before suit brought—Right of purchaser to claim indemnity from covenantor.* The purchaser of immovable property concerning which the seller has covenanted to indemnify the purchaser in the event of the title proving defective is not bound to wait until a suit is brought and he is deprived of the property by reason of a decree passed therein, but, if a claim which the purchaser has substantial reason to believe to be valid is brought against him, he may, after notice to the covenantor, compromise such claim and sue the covenantor on his covenant to recover the amount paid by him to effect the compromise. *Smith* v. *Compton, 3 B. & A. 407*, referred to. DURGA KUNWAR *v.* KALI CHARAN, (1913) I. L. R. 35 All. 168

**SALE CERTIFICATE.**

*See* ADVERSE POSSESSION. I. L. R. 40 Calc. 173

**SALE IN EXECUTION OF DECREE.**

*See* APPEAL TO PRIVY COUNCIL. I. L. R. 40 Calc. 635

**SALE FOR ARREARS OF REVENUE.**

——— *Act XI of 1859, ss. 53, 54—Purchase by mortgagee in execution of his mortgage decree of the mortgaged property—Subsequent arrears of revenue and sale for such arrears—Liability of purchaser in execution of decree of Civil Court—Rights of purchaser at sale for arrears of revenue.* S 54 of Act XI of 1859 enacts that when a share of an estate is sold "the purchaser shall acquire the share subject to all incumbrances, and shall not acquire any rights which were not possessed by the previous owner." On 9th August 1886 a mortgage was granted in favour of the respondent over a certain share in 4 out of 71 villages. On 31st May he obtained a decree on his mortgage which was made absolute on 19th December 1899 He executed his decree and a sale took place on 19th March 1900, at which the respondent himself became the purchaser. On 28th March an instalment of Government revenue on the 71 villages fell into arrear, and the whole residuary share of 71 villages including the 4 villages purchased by the respondent, was notified for sale. The respondent did not pay the revenue due, but on 23rd April he obtained a certificate confirming the sale of 19th March in execution of his decree. On 6th June 1900 the whole of the villages was sold for arrears of revenue and was purchased by the predecessor in title of the appellant. In a suit against the respondent for the share purchased at the execution sale:—*Held*, by the Judicial Committee (reversing the execution of the High Court), that the sale in execution of the mortgage decree took effect from the actual date of the sale, and not from its confirmation, and, therefore, from 19th March 1900 the respondent by his purchase became the proprietor of the estate sold, and not merely the purchaser of such right, title and interest in it as the mortgagor might have had. He was, therefore, notwithstanding the provisions of s. 54 of Act XI of 1859 (which in fact rather confirmed the view taken), not in a position to maintain as against himself, or as against third parties unconnected with mortgage transactions upon the property, the position that his mortgage still remained an incumbrance thereon. That incumbrance had become extinct by the mortgagee's overriding right when he became complete owner of the lands. To keep it alive, as the respondent sought to do, would introduce confusion into the mechanism of transfer and insecurity into the rights in immovable property which were not warranted by the Act. BHAWANI KUWAR *v.* MATHURA PRASAD SINGH, (1912) . . . I. L. R. 40 Calc. 89

**SALE OF GOODS.**

*See* CONTRACT. . I. L. R. 35 All. 325

——— *Insolvency of purchaser before delivery—Vendor's right to refuse delivery—Official Assignee, duties and rights of—Election within reasonable time—Tender of cash before delivery—Presidency Towns Insolvency Act (III of 1909), ss. 52, 62, 64—Joint Hindu family, insolvency of member of—Infant partner—Contract Act (IX of 1872), s. 247.* On the insolvency of the *kurta* of a *mitakshara* Hindu family, a suit is not

**SALE OF GOODS**—*concld.*

maintainable by the Official Assignee for damages for breach of a contract entered into by the firm which was the joint business of the family. Under s. 52 of the Presidency Towns Insolvency Act, the rights that passed to the Official Assignee were the rights the insolvent had under the contract *as an insolvent*: hence, it was the duty of the Official Assignee to declare his election to take up the contract within a reasonable time, and to tender cash before calling for delivery. *Ex parte Chalmers, L. R. 8 Ch. App. 289,* and *Morgan* v. *Bain, L. R. 10 C. P. 15,* followed. GREY *v.* LAMOND WALKER (1913) . **I. L. R. 40 Calc. 523**

**SALE OF LAND.**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ARTS. 97, 62. **I. L. R. 37 Bom. 538**

**SANCTION.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195 . **I. L. R. 37 Bom. 365**

**SANCTION FOR PROSECUTION.**

*See* CRIMINAL PROCEDURE CODE, S. 195. **I. L. R. 35 All. 90**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 250. **I. L. R. 37 Bom. 376**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 403 (*1*). **I. L. R. 36 Mad. 308**

*See* PENAL CODE (ACT XLV OF 1860), S. 199 . . **I. L. R. 35 All. 58**

*See* PERJURY . **I. L. R. 36 Mad. 471**

1. ———— *Application to District Judge under s. 195, cl. (6) of the Criminal Procedure Code (Act V of 1898)—Transfer of such application to a Subordinate Judge for disposal,—Jurisdiction—Civil Courts (Act XII of 1887), ss. 21(2), (4) and 22(1)—Appeal.* An application made to a District Judge under s. 195, sub-s (*6*) of the Criminal Procedure Code, against the order of a Munsif, cannot be transferred by the District Judge to a Subordinate Judge for disposal. *Ram Charan Chanda Talukdar* v. *Taripulla, I. L. R. 39 Calc. 774,* approved *Semble*: An application under s. 195, sub-s. (*6*) of the Criminal Procedure Code is not an "appeal" within the meaning of s. 22, sub-s. (*1*) of the Bengal Civil Courts Act, 1887. HARI MANDAL *v.* KESHAB CHANDRA MANA (1912). **I. L. R. 40 Calc. 37**

2. ———— *Appeal, right of —Grant or refusal of sanction by a lower authority—Application to superior authority whether a matter of appeal or revision—Limitation of the period of such application—Criminal Procedure Code (Act V of 1898), s 195 (6)—Limitation Act (IX of 1908), Sch I, Art. 154.* Sub-s. (*6*) of s. 195 of the Criminal Procedure Code does not confer a right of appeal to the superior authority, but only invests the latter with powers by way of revision. *Hardeo Singh* v. *Hanuman Dat Narain, I. L. R. 26 All. 244, Mathuswami Mundali* v. *Veeni Chetti, I. L. R. 30 Mad. 382,* discussed and distinguished. *Hari Mandal* v. *Keshab Chandra Manna 16 C. W. N. 903, Mehdi Hasan* v. *Tata Ram, I. L. R. 15 All. 61,* approved *Ram Charan Talukdar* v. *Taripulla, I. L. R. 39 Calc. 774,* referred to. Where the question arises with reference to Art. 154 of the Limitation Act (IX of 1908), it has merely to be stated that there is a doubt as to whether an appeal lies or not in such a case in order to give the applicant the benefit of the longer period. The High Court accordingly directed the Sessions Judge to hear an application to revoke a sanction made to him after the expiry of a month from this date. *In re North. Ex parte Hasluck,* [1895] *2 Q. B 264, Gopal Lal Sahai* v. *Bahorni, 15 C. L. J. 120,* followed. POCHAI METEH *v.* EMPEROR (1912). **I. L. R. 40 Calc. 239**

**SANCTION FOR PROSECUTION**—*concld.*

3. ———— *Criminal Procedure Code (Act V of 1898), s. 195—Verbal application—Jurisdiction—Revocation—Power of Court granting sanction—Practice.* Where a verbal application was made by counsel for sanction to prosecute under s. 195 of the Criminal Procedure Code and granted by the Court, but no order could be drawn up as the application was not made upon formal petition: *Held,* that upon a formal petition being subsequently presented, the Court had jurisdiction to grant such sanction, the former sanction being inoperative *Held,* further, that a Judge sitting on the Original Side has no jurisdiction to revoke a sanction previously granted by him, and that application for such revocation must be made to a Civil Appellate Bench of the Court. *Kali Kinkar Sett* v. *Dinobandhu Nundy, I. L. R. 32 Calc. 379,* discussed. THADDEUS *v.* JANAKI NATH SAHA (1912) . . **I. L. R. 40 Calc. 423**

4. ———— *Second sanction—Criminal Procedure Code (Act V of 1898), s. 195—Subsequent order, only a repetition of the first order—Revival of Proceedings—Penal Code (Act XLV of 1860), ss 193, 471—Limitation.* Where there are two orders purporting to grant sanction to the same prosecution, the later order will ordinarily be taken to be merely a repetition of the first and the period of limitation will begin to run from the date of the first order. *Durbari Mandar* v. *Jagoo Lal, I L. R. 22 Calc. 573,* refered to. DURGA PROSAD PATHAK *v.* LACHMAN BANIA (1913) . **L. R. 40 Calc. 584**

**SCREENING OFFENCE.**

*See* PENAL CODE (ACT XLV OF 1860) SS. 213, 214 **1. L. R. 37 Bom. 658**

**SCRIBE OF DOCUMENT.**

*See* EVIDENCE ACT (I OF 1872), S. 68. **I. L. R. 35 All. 254**

**SEARCH WARRANT.**

*See* UNITED PROVINCES EXCISE ACT (IV OF 1910), S. 63. **I. L. R. 35 All. 358**

**SEARCH WARRANT**—*concld.*

*See* UNITED PROVINCES EXCISE ACT (IV OF 1910), S. 60.
I. L. R. 35 All. 575

**SECOND APPEAL.**

*See* EXECUTION OF DECREE.
I. L. R. 40 Calc. 45

*See* VATAN . I. L. R. 37 Bom. 700

**SECOND SANCTION.**

*See* SANCTION FOR PROSECUTION.
I. L. R. 40 Calc. 584

**SECRETARY OF STATE FOR INDIA.**

——— suit against—

*See* JURISDICTION.
I. L. R. 40 Calc. 308

*See* JURISDICTION OF CIVIL COURT.
I. L. R. 40 Calc. 391

*See* NOTICE . I. L. R. 40 Calc. 503

*See* PUNITIVE POLICE.
I. L. R. 40 Calc. 452

**SECURITY.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 397, 123.
I. L. R. 37 Bom. 178

——— deposit of—

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XLI, R. 10, AND S. 129.
I L. R. 37 Bom. 572

**SECURITY TO KEEP THE PEACE.**

*See* CRIMINAL PROCEDURE CODE, S. 107
I. L R. 36 Mad. 315

*See* CRIMINAL PROCEDURE CODE, S. 125.
I. L. R. 35 All. 103

**SEPARATE SENTENCES.**

*See* CUMULATIVE SENTENCES.
I. L. R. 40 Calc. 511

**SEPARATION.**

*See* HINDU LAW—JOINT FAMILY.
I. L. R. 35 All. 80

**SENTENCE.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 397, 123.
I. L. R. 37 Bom. 178

**SERVIENT TENEMENT.**

*See* EASEMENT . I. L R. 40 Calc. 458

**SET-OFF.**

*See* CIVIL PROCEDURE CODE, 1908, O. VIII, R. 6. . I. L. R. 35 All. 238

**SETTLEMENT.**

*See* HINDU LAW—ADOPTION.
I. L. R. 37 Bom. 251

**SETTLEMENT OFFICER.**

——— order of—

*See* HIGH COURT, JURISDICTION OF.
I. L. R. 40 Calc. 477

**SHAFFEI MAHOMEDANS.**

*See* WAKF . I. L. R. 37 Bom. 447

**SHEBAIT.**

——— appointment of—

*See* RELIGIOUS TRUST
I. L. R. 40 Calc. 251

1. ——— *Alienation, power of—Dedicated property, acquisition of—Land Acquisition Act (I of 1894), s. 31, cl. (2)—Compensation money, withdrawal of.* The position of a *shebait* is analogous to that of the manager of an infant. He is entitled to possess and to manage the dedicated property, but he has no power of alienation in the general character of his rights. S. 31, cl. (2) of the Land Acquisition Act applies to a *shebait*, since he is not competent to alienate the land. *Kamini Debi* v. *Promotho Nath Mookerjee, 13 C. L. J. 597*, followed. RAMPRASANNA NANDI CHOWDHURI *v.* SECRETARY OF STATE FOR INDIA (1913)
I. L. R. 40 Calc. 895

2 ——— *Lease by a previous shebait in excess of his authority, suit for cancellation of, by succeeding shebait—New cause of action if accrues to each succeeding shebait—Adverse possession, when commences, and if interrupted by death of original shebait—Limitation.* The effect of a lease granted by a *shebait* in excess of his authority is not to give each succeeding *shebait* a new cause of action for setting aside the alienation, and adverse possession commences from the date of the original disposition of the property and is not interrupted by the death of the original *shebait* and the succession of the new *shebait*. Each succeeding *shebait* does not get a new start for the purpose of limitation. *Damodar* v. *Lakhan, L. R. 37 I. A. 147; I. L. R. 37 Calc. 885*, followed. Where the plaintiff as *shebait* of a Thakur to which office he succeeded in 1903 sued for declaration of title to land, for recovery of possession and for cancellation of a *putni* lease granted on the 9th September 1848 by a previous *shebait* who died in 1855, on the ground that the alienation was without legal necessity and in no way beneficial to the endowment and therefore not binding upon the endowed property in his hand: *Held*, that the suit was barred by limitation; the title to annul the *putni* was extinguished in 1867 at the latest. No substantial distinction in principle can be recognised between a *putni* and a sale. MADHU SUDAN MANDAL *v.* RADHIKA PRASANNO DAS (1912)
17 C. W. N. 873

**SIMILARITY OF NAMES.**

*See* TRADE-NAME I. L. R. 40 Calc. 570

**SLAUGHTERING FEES.**

*See* MADRAS DISTRICT MUNICIPALITIES ACT, 1884, S. 191 I. L. R. 38 Mad. 113

**SMALL CAUSE CASE.**

*See* APPEAL. . I. L. R. 40 Calc. 537

**SMALL CAUSE COURT.**

*See* GENERAL CLAUSES ACT (X OF 1897), S. 3 (25) . I. L. R. 35 All. 156

*See* VATAN . I. L. R. 37 Bom.

**SON.**

——— liability of—

*See* MORTGAGE . I. L. R. 40 Calc. 342

**SPECIAL DAMAGE.**

*See* LIMITATION I. L. R. 40 Calc. 898

**SPECIFIC PERFORMANCE**

——— ——— *Agreement to renew a lease when specifically enforceable against a subsequent lessee for value—Duty of subsequent lessee to enquire of terms of previous lease—Specific Relief Act (I of 1877), s. 27.* An agreement to renew a lease under certain conditions on the determination of the term of the lease can be specifically enforced against a subsequent lessee for value who has omitted to make an enquiry of the tenant in possession about the terms of the lease under which he was holding it The occupation of property by a tenant ordinarily affects one who would take a transfer of that property with notice of that tenant's rights, and if he chooses to make no enquiry of the tenant, he cannot claim to be a transferee without notice. BABURAM BAG *v.* MADHAB CHANDRA POLLAY (1913) I. L. R. 40 Calc. 565

**SPECIFIC RELIEF ACT (I OF 1877).**

——— s. 9.

1. ——— ——— *Thicca tenant, ejectment of—Civil Procedure Code (Act V of 1908), s. 115—Jurisdiction—Error of law* Where in a suit, brought within 6 months from the date of dispossession under s. 9 of the Specific Relief Act, to recover lands from which the plaintiff was dispossessed by the end 1318, B. S., the Munsif found that the plaintiff was in possession of the lands for the year 1318, B. S, as *thicca* tenant or tenant-at-will, but holding that the said *thicca* right ceased after 1318 dismissed the plaintiff's suit: *Held*, that the tenant was entitled to a decree for possession of those lands. *Held*, also, that the Munsif's decision was a refusal to exercise jurisdiction vested in him, and the High Court could interfere under s. 115 of the Civil Procedure Code. RAMDOYAL SHAMANTA *v.* UPENDRANATH SHAMANTA (1912) 17 C. W. N. 501

2. ——— ——— *Decree stayed pending suit for confirmation of possession—Onus as in suit for ejectment* Where a decree in a suit under s. 9 of the Specific Relief Act is stayed pending a suit by the defendant for declaration of his title and confirmation of posession: *Held*, that the plaintiff in the latter suit must affirmatively prove his right to present possession. MONOHAR PAL *v.* ANANTA MOYEE DASSEE (1913) 17 C. W. N. 802

**SPECIFIC RELIEF ACT (I OF 1877)—** *contd.*

——— s. 21—*Partners, agreement, amongst, to refer disputes to arbitration—Withdrawal of one without cause, from arbitration—Suit to recover a share in debt realised by the other partner, if lies.* Where a person has agreed with another that all matters in controversy between them should be referred to arbitration, it is not open to that person to resile from the agreement unless for good and sufficient cause. A dispute between partners whose business has come to an end regarding the division of assets, can only be finally settled in a proper suit for dissolution of partnership and for adjustment of accounts, and it is not proper that each of the parties should proceed by separate suits in order to recover from the other any sums due to the partnership business which he alone may have realised. Where on the termination of a partnership business, the partners agreed to refer all matters in dispute between them relating to the partnership to arbitration, and then one of the partners withdrew from the arbitration without sufficient cause, and instituted a suit in the Small Couse Court to recover a half share of a partnership debt realised by the other partner: *Held*, that the debt in suit being one of the matters which the plaintiff had contracted to refer to arbitration, s 21, Specific Relief Act, was a bar to the continuance of the suit. That the suit was not maintainable at all. RAM CHANDRA PAL *v.* KRISHNA LAL PAL (1912) 17 C. W. N. 351

——— s. 27.

*See* SPECIFIC PERFORMANCE. I. L. R. 40 Calc. 565

——— ——— s. 29—*Agreement of sale—Specific performance—Alternative relief—Civil Procedure Code (Act V of 1908), O. VII. r. 7.* Where in an agreement of sale it was stipulated that if the transaction fell through for default of the vendors (defendants), the vendee (plaintiff) would be free to enforce specific performance at law and would be entitled to be credited with interest on his deposit from the date on which it was made, but if it fell through owing to the vendees' default, then the latter would be entitled to the refund of the bare deposit without interest, and the vendors would be at liberty to dispose of the property in any other way they might choose; and the Court below refused a decree for specific performance and gave a decree for the refund of the deposit with interest though the plaintiff (vendee) did not ask for any such alternative relief: *Held*, that the Court below was in the main right, as it did not necessarily follow from the dismissal of a suit for specific performance that an order for the refund of any part-payment of the purchase-money should also be denied. *Ibrahimbhai* v. *Fletcher, I. L. R. 21 Bom. 827, Alokeshi Dassi* v. *Hara Chand Dass, I. L. R. 24 Calc. 897, Amma Bibi* v. *Udit Narain Misra, I. L. R. 31 All. 68; Howe* v. *Smith, 27 Ch. D. 89*, referred to. The vendee could, notwithstanding that his suit for specific performance has been dismissed, and no matter on what ground it failed have brought a suit for the recovery of his deposit *Parangodan Nair* v. *Perumtodika Illot Chata*,

**SPECIFIC RELIEF ACT ( I OF 1877)—** *concld.*

——— s. 29—*concld*

*I. L. R. 27 Mad. 380*, referred to. *Held*, further, that the Subordinate Judge was right in refusing to relegate the parties to fresh litigation as there could have been but one result of another suit on the contract. *Howe* v. *Smith, 27 Ch. D. 89*, referred to. RAGHU NATH SAHAI *v.* CHANDRA PRATAP SINGH (1912) . . . **17 C. W. N. 100**

——— s. 42.

*See* COURT-FEE . **I. L. R. 40 Calc. 245**

——— *Declaration, when will be given.* In order that a suit can be held not maintainable by reason of the proviso to s. 42 of the Specific Relief Act (I of 1877), it must be shown that the defendant was in possession, and that as against him the plaintiff could have obtained an order for delivery of possession. MALAIYYA PILLAI *v.* PERUMAL PILLAI (1913) . **I. L. R. 36 Mad. 62**

——— s. 45.

*See* MUNICIPAL CORPORATION.
**I. L. R. 40 Calc. 836**

——— ss. 45, 46.

*See* PLEADERSHIP EXAMINATION.
**I. L. R. 40 Calc. 588**

**STAMP.**

*See* STAMP ACT (II OF 1899), SS. 2 (*23*), 62 AND 63 . **I. L. R. 35 All. 299**

**STAMP ACT (II OF 1899).**

——— ss. 2 (*23*), 62, 63.

——— *Sarkhat—Memorandum of account—Receipt—Several items of over Rs. 20 each—Each item to be stamped. Held*, that a memorandum of account between debtor and creditor, which was left in the possession of the debtor and consisted of items entered from time to time of money advanced and repaid, was a document which required a separate receipt stamp in respect of each item of over Rs. 20. EMPEROR *v.* TULSHI RAM (1913) . **I. L. R. 35 All. 290**

——— Sch. I, Arts. 5, 43—*Submission to arbitration, stamp upon.* Where certain contract notes, in addition to the intimation by the broker of the purchase or sale of the goods, contained submissions in writing by the buyer and seller to refer disputes to arbitration signed by the broker as the authorised agent of the parties, and, being stamped with a one-anna stamp according to a practice recognised by the Court for a long series of years, was held by the Trial Judge to be inadmissible in evidence on the ground that the submission to arbitration was chargeable with an eight-anna stamp under Sch. I, Art. 3 of the Indian Stamp Act as an agreement not otherwise provided for, the Court of Appeal held that the Court was not prepared to question the practice on the materials before it, and that the submission should be treated as duly stamped. *In the matter of s. 11, sub-s. (2) of the Indian Arbitration Act of 1866*, and *In the matter of a Reference to Arbitration*. BAIJNATH *v.* AHMED MUSAJI SALEJI (1912) . **17 C. W. N. 395**

**STAMP ACT (II OF 1899)—***concld*

——— Sch. I—*concld.*

**STAMP-DUTY.**

*See* ARBITRATION.
**I. L. R. 40 Calc. 219**

**STANDARD OF PROOF.**

*See* LIMITATION **I. L. R. 40 Calc. 898**

——— *Civil and criminal trials—Presumption—English rules.* On the question of the standard of proof: there is but one rule of evidence which in India applies to both civil and criminal trials, and that is contained in the definition of "proved" and "disproved" in s. 3 of the Evidence Act. The test in each case is, would a prudent man after considering the matters before him (which vary with each case) deem the fact in issue proved or disproved? The Court can never be bound by any rule but that which, coming from itself, dictates a conscientious and prudent exercise of its judgment There is a presumption against crime and misconduct, and the more heinous and improbable a crime is, the greater is the force of the evidence required to overcome such presumption. The English rule in these matters does not, as such, apply in India. *Jarat Kumari Dassi* v. *Bissessur Dutt, I. L. R. 39 Calc. 245*, explained. WESTON AND OTHERS *v.* PEARY MOHAN DASS (1912) **I. L. R. 40 Calc. 898**

**STATUTE LAW.**

*See* CRIMINAL REVISION
**I. L. R. 40 Calc. 41**

**STATUTES, CONSTRUCTION OF.**

*See* CONSTRUCTION OF STATUTES.

1. ——— Where a later Act of Legislature does not purport or affect to supersede an earlier Act, the Court will endeavour to read the two enactments together and to avoid conflict if possible. RANGACHARYA *v.* DASACHARYA (1912) . . . **I. L. R. 37 Bom. 231**

2. ——— *Change in language if necessarily imports a change of law.* A change in the wording of a section of an enactment does not necessarily involve a change in the law. SECRETARY OF STATE FOR INDIA *v* PURNENDU NARAIN ROY (1912) . . **17 C. W. N. 1151**

**STAY OF EXECUTION.**

*See* EXECUTION OF DECREE.
**I. L. R. 35 All. 119**

*See* HIGH COURT, JURISDICTION OF.
**I. L. R. 40 Calc. 955**

**STEAMER COMPANY.**

——— liability of—

*See* CARRIERS . **I. L. R. 40 Calc. 716**

**STRANGER PURCHASER.**

*See* COURT SALE **I. L. R. 36 Mad. 194**

**STRIDHAN.**

*See* HINDU LAW—INHERITANCE.
**I. L. R. 36 Mad. 116**

*See* HINDU LAW—STRIDHAN.

**SUB-MORTGAGE.**

*See* AGRA TENANCY ACT (II OF 1901), S. 20.
**I. L. R. 35 All. 405**

**SUBROGATION.**

*See* MORTGAGE—REDEMPTION.
**I. L R. 36 Mad. 426.**

**SUCCESSION.**

*See* HINDU LAW—ENDOWMENT.
**I. L. R. 35 All. 283**

**SUCCESSION ACT (X OF 1865).**

———— *Legacy given if a specified uncertain event shall happen, no time being mentioned in the will for occurrence of that event—Construction of wills made in India by natives of India.* A testator made certain legacies in his will in favour of his son *N* and directed that in the event of *N* dying after the death of the testator without marrying, or if married, without lineal heir, his share should revert equally to his surviving sisters or their heirs The testator died and *N* claimed to be entitled to the legacies absolutely. *Held*, that the restriction sought to be placed on *N's* inheritance by the said provision of the will was nugatory, and that *N* took an absolute interest in all property bequeathed to him under the will. In constructing a will made in India by a native of India, it must be kept in mind that such a will cannot be construed by reference to cases on wills contained in the English Law Reports. *Norendra Nath Sircar* v. *Kamalbasini Dassi, I. L. R 23 Calc. 563; L. R. 23 I. A. 18, 26*, referred to. NOWROJI PUDUMJI (SIRDAR) *v.* PUTLIBAI (1912) . **I. L. R. 37 Bom. 644**

———— **ss. 105, 159.**

*See* WILL. . **I. L. R. 40 Calc. 192**

———— **s. 111.**

*See* HINDU LAW—WILL
**I. L. R. 40 Calc. 274**

———— **s. 164.**

*See* DOCTRINE OF SATISFACTION.
**I. L. R. 37 Bom. 211**

———— **s. 244**— *Civil Procedure Code, 1908, s 2—Will—Probate—Application for probate dismissed—"Decree"—"Order"—Appeal. Held*, that the order of the District Judge granting or refusing probate of a will on an application made under the provisions of s. 244 of the Indian Succession Act, 1865, is a 'decree' within the meaning of s. 2 of the Code of Civil Procedure, 1908, and appealable as such. *Held*, also, that the court-fee payable on such an appeal is Rs. 10 under Art. 17, Cl. (vi) of the second schedule to the Court Fees Act, 1870. *Umrao Chand* v. *Bindraban Chand*,

**SUCCESSION ACT (X OF 1865)**—*concld.*

———— **s. 244**—*concld.*

*I. L. R. 17 All., 475, Esoof Hasshim Dooply* v. *Fatima Bibi, I. L. R. 24 Calc. 30*, and *Sheikh Azim* v. *Chandra Nath Namdas, 8 C. W. N. 748.* MOUNT-STEPHENS *v.* GARNETT-ORME (1913)
**I. L. R. 35 All. 448**

**SUCCESSION CERTIFICATE.**

*See* SUCCESSION CERTIFICATE ACT.

**SUCCESSION CERTIFICATE ACT (VII OF 1889).**

*See* LIMITATION ACT (IX OF 1908), SCH. I, ART. 182, CL. (5).
**I. L R. 37 Bom. 559**

———— *Certificate of succession—Joint certificate not illegal if granted with the consent of the grantees. Held*, that the grant of a joint certificate under the provisions of the Succession Certificate Act, 1889, is not illegal, provided that the persons to whom such certificate is granted all consent to its being granted in this form RAM RAJ *v.* BRIJ NATH (1913) **I. L. R. 35 All. 470**

———— **ss. 4, 16**—*Succession certificate—Holder of certificate not entitled to transfer his rights thereunder Held*, that the rights conferred by the grant of a succession certificate under the Succession Certificate Act, 1889, are personal to the grantee and cannot be assigned ALLAH DAD KHAN *v.* SANT RAM (1912) . **I. L. R. 35 All. 74**

———— **s. 9.**

1. ———— *Certificate in favour of Hindu widow to realize interests only—Certificate ultra vires. Held*, that where a certificate was granted to a Hindu widow for collection of debts due to her late husband, it was not competent to the Court, in lieu of requiring security from the grantee, to give a certificate for realization of interests only without disturbing capital *Shib Dei* v. *Ayudhia Prasad, F. A. f O, No. 108 of 1910*, decided on the 13th of February 1911, referred to. JAI DEI *v.* BANWARI LAL (1913) . **I. L R. 35 All. 249**

2. ———— *Certificate to a minor can be granted—S 9, no bar.* A succession certificate can be granted to a minor. *Per* CURIAM s. 9 of the Succession Certificate Act (VII of 1889) presents no difficulty to the grant in such a case *Kali Coomar Chatterjea* v. *Tara Prossunno Mookerjea, 5 C. L. R. 517*, and *Ram Kuar* v. *Sardar Singh, I. L. R. 20 All. 352*, followed *Ex parte Mahadeo Gangadhar, I. L. R. 28 Bom. 344*, and *Gulabchand* v. *Moti, I. L R. 25 Bom 523*, considered KRISHNAMA CHARLU *v* VENKAMMAH (1913)
**I. L. R. 36 Mad. 214**

**SUDRAS.**

*See* HINDU LAW—INHERITANCE.
**I. L. R. 40 Calc. 545**

**SUIT.**

*See* REVIEW, APPLICATION FOR.
**I. L. R 40 Calc. 541**

**SUIT**—*concld.*

———— dismissal of—

*See* CIVIL PROCEDURE CODE, 1908, O IX, RR 8, 9; O. XXII, RR 3, 9.
**I. L. R. 35 All. 331**

———— *Bengal Tenancy Act (VIII of 1885), ss. 30 (b), 37, 105, 107, 109—Whether an application under s. 105 of the Act, a suit—Withdrawal of an application under that section, effect of—Subsequent suit for enhancement of rent under s. 30(b), whether maintainable* An application under s. 105 of the Bengal Tenancy Act cannot be regarded as a suit: *Upadhya Thakur* v *Persidh Singh, I L. R. 23 Calc. 723*, referred to Therefore, although an application under s 105 of the Bengal Tenancy Act was previously withdrawn without liberty to make a fresh application, a subsequent suit for enhancement of rent under s. 30 (*b*) of the Act is maintainable; the provisions of either s 37 or 109 of the Act are not applicable to such a case. CHEODDITTI *v.* TULSI SINGH (1912) . **I. L. R. 40 Calc. 428**

**SUITS VALUATION ACT (VII OF 1877).**

———— s. 8.

*See* COURT-FEE.
**I. L. R. 40 Calc. 245, 615**

**SUMMARY JURISDICTION.**

*See* COMPANIES ACT (VI OF 1882), S. 74
**I L. R. 35 All 173**

**SUMMONS.**

*See* CIVIL PROCEDURE CODE, 1908, O. V, R. 15 . . **I L R 35 All. 556**

**SURETY.**

1. ———— *Promissory note executed by agent after settlement of accounts for sum due to principal—Representatives in interests of and surety for deceased agent, by principal—Surety, if entitled to go behind promissory note and have account taken in his presence—Set off, if can be pleaded—Interest, when to run from.* The plaintiffs sued for the recovery of money due on a promissory note executed by their deceased agent *S* in their favour after settlement of accounts for the sum due to them. The defendants, who were the brothers of *S*, were sued both in their character as representatives in interests of *S* and as sureties for him under a surety bond executed by them in favour of the plaintiffs. The defendants disputed the amount due and claimed as set-off the amount payable by the plaintiffs to their brother on account of salary. The Court after taking accounts, made a decree in favour of the plaintiffs for a smaller sum than that mentioned in the promissory note · *Held*, that the principle that as between a principal and an agent settled accounts will not be re-opened unless fraud or undue influence is established. is limited in its application only as between a principal and an agent and as the defendants were sued not only as representatives in interest of the deceased agent but also as sureties they were entitled to go behind the promissory note

**SURETY**—*concld.*

and to have the accounts examined in their presence. The defendants were also competent to plead a set-off. S. 111 of the Civil Procedure Code (Act XIV of 1882) does not take away from parties any right to set-off whether legal or equitable which they would have independently of that Code and such right exists not only in cases of mutual debts and credits but also when cross demands arise out of the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant should be driven to a cross suit *Held*, further, that the plaintiffs were entitled to interest by way of damages from the date of the institution of the suits, and not merely from the date of the decree of the Court of first instance. KALANUND SINGH v. GIR PROSAD DAS (1913) . **17 C. W. N. 1060**

2. ———— *Surety-bond for judgment-debtor's appearance in Court—Death of judgment-debtor before time of appearance—Liability of surety.* Where the decree-holder applied to enforce the condition of an undertaking given by a surety that the judgment-debtor would apply in insolvency within a specified time and that he would appear in Court whenever he was required to do so, and the judgment-debtor died before the time of appearance had arrived: *Held*, that the decree-holder lost his remedy against the surety. The event which occurred was not in contemplation of either party and therefore put an end to the obligation that there was under the contract. NABIN CHANDRA HAZARI *v.* MRITUNJOY BARRIK (1913) . . . . **17 C. W. N. 1241**

## T

**TARWAD.**

*See* MALABAR LAW.
**I. L. R. 36 Mad. 591**

———— *Presumption as to ownership of property acquired in the name of junior member of tarwad—Presumption of fact and not of law.* No presumption of law can be raised as to whether properties acquired in the name of a junior member of a tarwad belong to him or to his tarwad Any presumption to be raised is one of fact. GOVINDA PANIKKER *v.* NANI (1913)
**I. L. R. 36 Mad 304**

**TAXATION.**

*See* BOMBAY REGULATION II OF 1827, S. 52 . **I. L. R. 37 Bom. 303**

**"TEJI MANDI" TRANSACTIONS.**

*See* WAGER . **I. L. R. 37 Bom. 264**

**TENANCY AT WILL.**

*See* LANDLORD AND TENANT.
**I. L. R. 36 Mad. 557**

**TERRITORIAL JURISDICTION.**

*See* DIVORCE . **I. L. R. 40 Calc. 215**

**THAKBUST MAP.**

——————— *If evidence of conditions at Permanent Settlement—Second appeal—Chitta of lands escheated to Government, if public document.* It cannot be laid down broadly that a *thakbust* map prepared in 1865 is no evidence of the state of things at the Permanent Settlement. Where in deciding whether certain lands in dispute were included within one estate or another at the time of the Permanent Settlement the lower Appellate Court relied on the *thakbust* map: *Held*, that the finding could not be questioned in second appeal. A *chitta* prepared by Government of lands which had escheated to it stands on the same footing as a *chitta* prepared in respect of lands in which Government is interested, as a proprietor. Such a *chitta* is not a public document. FAZLUR RAHIM *v* NABENDRA KRISHNA ROY (1912) **17 C. W. N. 151**

**THEFT.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS. 397, 123. **I. L. R. 37 Bom. 178**

——————— *Theft of fish in irrigation tank—Fish, offence of theft of—Dependent upon power of fish to leave the tank.* Although the capture of fish in an ordinary irrigation tank will not of itself amount to theft, yet if the water in the tank become so low as to permit the fish leaving the tank, the offence may be committed. *Subba Reddi* v *Munsoor Ali Saheb, I L. R. 24 Mad. 81*, explained. *Re* SUBBIAN SERVAI (1913) **I. L. R. 36 Mad. 472**

**TITLE.**

*See* FRAUD . **I. L. R. 37 Bom. 217**

*See* GUJRAT TALUKDARS' ACT (BOM. ACT VI OF 1888), S. 31. **I. L. R. 37 Bom. 380**

*See* LIMITATION **I. L. R. 37 Bom. 231**

*See* PROVINCIAL SMALL CAUSES COURTS ACT (IX OF 1887), SS. 15, 33 **I. L. R. 37 Bom. 675**

*See* REVIEW **I L. R. 40 Calc. 140**

**TITLE-DEEDS.**

*See* LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT, CL 12. **I. L. R. 37 Bom. 494**

**TORT.**

*See* LIMITATION **I. L. R. 40 Calc. 898**

**TRADE.**

*See* HINDU LAW—JOINT FAMILY. **I. L. R. 37 Bom. 340**

**TRADE-MARK.**

*See* COUNTERFEITING TRADE-MARK

1. ——————— *Using a false trade-mark—Possession of instruments for counterfeiting a trade-mark—Selling umbrellas with counterfeit trade-mark—Trade-name, use of, by rival manufacturer—Using a false trade description—Penal Code (Act XLV of 1860), ss. 482, 485 and 486—Merchandise Marks Act (IV of 1889), ss. 6 and 7.* A trade-mark must be some visible and concrete device or design affixed to goods to indicate that they are the manufacture of the person whose property the trade-mark is It must consist of a name impressed in some distinctive way. There is a distinction between a trade-mark and a trade-name: *Singer Manufacturing Co.* v *Loog, L R. 8 A. C. 15*, referred to. Where a tradesman alleged in his complaint to the Magistrate that his trade-mark consisted of a particular device, with the name "*Butto Kristo Pal*" or "*Sri Butto Kristo Pal*," said to be that of his son, but at the trial claimed only the name as the trade-mark while one of the partners disclaimed the device except the name, and the former's son claimed the name as representing his own trade-mark in a separate business, and the rest of the prosecution evidence did not establish the possession or use of any specific trade-mark: *Held*, that the complainant had not proved that he had a trade-mark, for the infringement of which a rival trader, using a similar device with the same name, could be convicted under ss. 482, 485 or 486 of the Penal Code, and that the case was of a civil nature When a manufacturer has no exclusive right to manufacture a certain article or even articles of a particular brand, all that he can claim is that no other manufacturer should so mark such articles as to pass them off as the former's when they are not. *Semble*: The improper use of a trade-name may fall under s. 5 of the Merchandise Marks Act (IV of 1889) and be punishable under s. 6 or s. 7 as a false trade description ANATH NATH DEY *v.* EMPEROR (1912) . **I. L. R. 40 Calc. 281**

2. ——————— *Licensor and Licensee—Estoppel—Evidence Act (I of 1872), s. 117—Licensee's right to question Licensor's title—Public Policy—Assignment of trade-mark denoting merely standard or quality of manufacture—Abandonment of trade-mark—Incoming Partner, liability of, for obligations of firm—Costs* The licensee of a trade-mark is estopped as against his licensor from questioning the latter's title to the trade-mark The fact that the licensee has repudiated his contract with his licensor cannot give him the right to question the licensor's title, for the latter's concurrence is necessary to rescind the contract *Johnstone* v *Milling, 16 Q. B. D. 460*, referred to. Where jute trade-marks, bearing the name of the original proprietor of those marks, have come, by usage of trade, to indicate, not the skill in selecting jute of the original proprietor so as to make those marks personal to him, but merely a certain standard, kind, quality, or mode of manufacture of goods, irrespective of the person in whose hands the business might be, the assignment of such marks is not a fraud on the public or against public policy. A license for four out of seven trade-marks, the remaining three having been abandoned, is valid. *British American Tobacco Co , Ld.* v. *Mahboob Buksh, I. L. R. 38 Calc. 110*, distinguished. As the right to a trade-mark might be acquired so it might be abandoned, and no

**TRADE MARK**—*concld.*

length of time is required for acquiring the right, or, apart from statutory law, to constitute an abandonment *Lavergne* v. *Hooper, I. L. R. 8 Mad. 149,* approved. An agreement by an incoming partner to make himself liable to creditors of the firm before he joined it, may be established by indirect evidence, and the Courts lean in favour of such an agreement and are ready to infer it from slight circumstances. *Ex parte Jackson, 1 Ves Jun. 131, Ex parte Peele, 6 Ves. Jun 602,* and *Rolfe and the Bank of Australia* v. *Flower Salting & Co., L R. 1 P. C. 27,* approved. JAGARNATH & Co. *v.* CRESSWELL AND OTHERS. (1913) . . . **I. L. R. 40 Calc. 814**

**TRADE-NAME.**

——— use of—

*See* TRADE MARK **I. L. R. 40 Calc. 281**

——— *Similarity of names of Insurance Companies—"Oriental"—Word known in business—Intention to deceive—Injury to plaintiff—Injunction—Provident Insurance Society—Provident Insurance Societies Act (V of 1912), ss. 5 and 6—Indian Life Assurance Companies Act (VI of 1912)—User.* On an application by the plaintiff company, an old, large and well known Insurance Company, registered in Bombay, and having a branch office in Calcutta, for a temporary injunction to restrain the defendant company, which was incorporated in Calcutta in November 1912, with a small share capital, but with the widest powers of doing life and other insurance business, though its present rules limited its life insurance business to the issue of policies for sums not exceeding Rs. 500, from using or carrying on business under the name it had adopted — *Held,* that, inasmuch as the term "Oriental" had become identified with the plaintiff company, an injunction should issue restraining the defendant company from using the term "Oriental" in its name, as such user would be likely to deceive the public, and the defendant company would be a source of danger to, and would be liable to cause damage to, the plaintiff company. *Merchant Banking Company of London* v. *Merchants Joint Stock Bank, L. R. 9 Ch D. 560, Accident Insurance Company, Ld.* v. *Accident, Disease and General Insurance Corporation, Ld, 54 L. J. Ch. 104* and *Guardian Fire and Life Assurance Company* v *Guardian and General Insurance Company Ld., 50 L. J. Ch. 253,* referred to. The circumstance that the field of operation of the defendant company was in the Orient, did not entitle it to the use of the terms "Oriental." *Hendricks* v. *Montague, L. R. 17 Ch. D. 638,* followed. *Rugby Portland Cement Co., Ld.,* v. *Rugby and Newbold Portland Cement Co., Ld., 8 R P. C. 241 (C.A.) 9 R. P. C. 46,* distinguished. *Semble:* An Insurance Company, incorporated under the Indian Companies Act, is not a Provident Insurance Society within the scope of the Provident Insurance Societies Act of 1912. ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE CO., LD. *v.* ORIENTAL ASSURANCE CO., LD. (1913) . . **I. L. R. 40 Calc. 570**

**TRANSFER.**

*See* CRIMINAL PROCEDURE CODE, s. 526.
**I. L. R. 35 All. 5**

*See* TRANSFER OF APPLICATION.

*See* TRANSFER OF HOLDING.

——— *Appeal—Powers of Court to whom case is transferred for trial—Limitation—Practice* When an appeal has been transferred for trial by a District Judge to a Subordinate Judge, the Subordinate Judge has, for the purpose of disposing of the appeal, under the Bengal, North-Western Province and Assam Civil Courts Act, all the powers which could be exercised by the District Judge. Where, therefore, an appeal was presented to the District Judge after the period of limitation, owing to a mistake of law as regards the appealability of the suit, and the District Judge admitted the appeal under s. 5 of the Limitation Act and transferred the appeal to the Subordinate Judge for disposal, the Subordinate Judge has power to consider whether the appeal was competent or barred by limitation: *Jhotee Sahoo* v. *Omesh Chunder Sircar, I. L. R. 5 Calc 1,* not followed. VISMADEV DAS v. SITA NATH ROY (1912) . **I. L. R. 40 Calc. 259**

**TRANSFER OF APPLICATION.**

*See* SANCTION FOR PROSECUTION.
**I. L. R. 40 Calc. 37**

**TRANSFER OF HOLDING.**

*See* LANDLORD AND TENANT.
**I. L. R. 40 Calc. 870**

**TRANSFER OF PROPERTY.**

*See* RIGHT OF SUIT.
**I. L. R. 36 Mad. 373**

**TRANSFER OF PROPERTY ACT (IV OF 1882)**

——— **ss 3, 41**—*Benami sale— Sale by benamidar—Estoppel—Notice— Wilful abstention from calling for title-deeds and from making enquiry as to title —Infant, if may be estopped by his own fraudulent misrepresentations—Acts and admissions of guardian, if bind ward. B* executed in favour of *R* a *benami* sale-deed which as well as the property conveyed (a putni tenure) he kept in his own possession *R* subsequently purported to transfer the property to the defendant: *Held,* in a suit by the representative of *B* against the defendant for recovery, that if it was found that the latter made no attempt to take the title-deeds of the property including the sale-deed of *B* in *R's* favour, the wilful or negligent abstention on the part of the defendant to call for the title-deeds would deprive him of the protection which a Court of Equity would extend to a *bonâ fide* purchaser for value without notice, and the defendant would not be allowed to set up the plea of estoppel against the plaintiff. *Quære*: Whether in a case of fraudulent representation an infant may be bound by an estoppel. *Held,* that an infant is not estopped by the acts or admissions of other persons

**TRANSFER OF PROPERTY ACT (IV OF 1882)**—*contd.*

——— s. 3—*concld.*

in this case his mother and natural guardian. *Held*, further, that as the mother of the infant did not place the *benamidar* of his father, *R*, in a position where she knew *R* would be able to commit a fraud (there being no finding and it being unlikely that she even knew of the existence of the *benami* conveyance to *R*) there was no ground for a plea of estoppel as contemplated by s 41 of the Transfer of Property Act. A purchaser is bound to make enquiry into the title, and if he does not take reasonable care to do so, he takes the chance of his claim being defeated by the real owner. RAM CHARAN DAS *v.* JOY RAM MAJHI (1912) . . **17 C. W. N 10**

——— s. 43—

*See* ADVERSE POSSESSION.

**I. L. R. 40 Calc. 173**

——— s. 52

1. ——— *Lis pendens—Suit to enforce simple mortgage ending in compromise—Execution sale pending suit—Purchaser, if bound by compromise—"Contentious suit"—"Immovable property," suit respecting.* The mere fact that a suit is terminated by a consent decree does not take the suit out of the operation of the doctrine of *lis pendens* as enunciated in s. 52 of the Transfer of Property Act A suit to be "Contentious" within the meaning of s. 52, need not be contested in all its stages. A contentious suit is one in which a party having difference with another puts the law in motion as against the other. *Kailas Chandra* v *Ful Chand, 8 B L. R 474, Kasumunnesa* v. *Nilratna, I. L. R. 8 Calc. 188*, distinguished. *Kishory Mohan* v. *Mazafar Hussain, I L R. 18 Calc. 79*, referred to. *Fayyaz Hussain* v. *Prag Narain, L. R. 34 I. A. 102*, relied on. The doctrine of *lis pendens* applies to a suit to enforce a simple mortgage. *Fayyaz Hussain* v. *Prag Narain, L. R. 34 I A. 102*, referred to. The doctrine applies to a purchase at an execution sale pending the suit. *Radha Madhub* v. *Monohur, L. R 15 I. A. 97, Moti* v. *Kurabuldin, L. R. 24 I. A. 170, Fayyaz Hussain* v. *Prag Narain, L. R. 34 I. A 102*, relied on. TINOODHAN CHATTERJEE *v.* TRAILOKHYA CHARAN SANYAL (1912) . **17 C. W. N. 413**

2 ——— *Lis pendens—Partition between defendants inter se of the property in dispute—Partition affected by lis pendens—Plaintiff's omission to bring partition to the notice of the Court—Practice—Array of parties—Pleading—Change of parties in pending litigation—Procedure.* The plaintiff, who owned a third share in an equity of redemption, obtained a decree to redeem his share of the mortgaged property from his four mortgagees. The plaintiff paid the redemption money in the Court, but after the expiry of the period fixed by the Court. The Subordinate Judge held that the payment was validly made and ordered possession of the property to be delivered to the plaintiff. This order was reversed by the District Judge on the 7th January 1902. On the 10th January 1902, the four joint mortgagees effected a partition *inter se*, and the property, the subject-matter of the suit, fell to the share of one of them, Gopal. The plaintiff appealed to the High Court from the District Judge's order, on the 14th January 1902. The next day, that is, on the 15th January 1902, Gopal died, leaving him surviving a widow Gangabai. In the High Court appeal, the fact of partition dated the 10th January 1902 was not mentioned; but Gopal's death was brought to the Court's notice, but it was held that the right to sue survived against the other defendants. The High Court reversed the order of the District Judge and remanded the suit for extending the time of payment if any good cause were shown for it. In the District Court Gopal's name was removed from the array of parties and time was extended. The plaintiff paid the money within the time so extended and obtained an order to recover possession of the property. Gopal's widow, Gangabai, intervened on the ground that as she was no party to the District Judge's order, she was not bound by it and could not be dispossessed. The Subordinate Judge granted the application. The plaintiff thereupon brought a suit to establish his right to the possession of the property. The Subordinate Judge decreed the plaintiff's claim; but on appeal, it was dismissed by the District Judge. On appeal to the High Court, the decree was confirmed on the ground that the plaintiff's right was affected by his own negligence in omitting to bring upon the record the representatives of Gopal; and his right was not affected by the partition of the 10th January 1902 which did not fall within s. 52 of the Transfer of Property Act, 1882. On appeal, under the Letters Patent: *Held*, that the plaintiff could not be defeated on the ground that in another proceeding he did not communicate to the Court the fact of Gopal's death, which he did not know *Held*, further, that the partition in question fell within s 52 of the Transfer of Property Act, 1882, for it was a transfer or, at any rate, a dealing with the property in suit. *Per* CURIAM: It is part of any litigant's right so far as the subject-matter and conduct of the suit are concerned, to know precisely where he stands. He is entitled to know who his opponents are, and, when that has been definitely and finally ascertained, to insist that no dealing on their parts, with the property in suit, shall compel him to go further afield, and bring in new parties, who, but for such dealing, could have had no *locus standi* at all. A complete right needs a person of incidence as well as a person of inherence. No party during the conduct of a suit has any power, by dealing with the property, to change the person of incidence or inherence to the detriment of the other. ISHWAR LINGO *v.* DATTU GOPAL (1913)

**I. L. R. 37 Bom 427**

3. ——— *Lis pendens—Maintenance decree—Execution proceedings after a long*

**TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.***

**——— s. 52—*concld.***

*period—Alienation of property during the period—Active prosecution.* In 1902, defendant No. 1 obtained a maintenance decree which declared a charge in her favour on the family property. In 1906, the judgment-debtors sold a portion of the property to plaintiff Defendant No. 1 applied in 1907 to execute the decree In the execution proceedings, one of the lands sold to plaintiff was put up to sale and purchased by defendant No. 3 in 1910. The plaintiff sued for a declaration that the sale to him was not affected by the subsequent sale. The lower Court rejected his claim on the ground that the sale in plaintiff's favour was affected by *lis pendens*. On appeal: *Held*, reversing the decree, that the doctrine of *lis pendens* had no application to the case, for the decree was passed four years earlier and no execution proceedings were taken, and it could not be said that the purchase by the plaintiff was made during the active prosecution of a contentious suit or proceeding. BHOJE MAHADEV PARAB *v* GANGABAI (1913) . . **I. L. R. 37 Bom. 621**

——— s. 53—*Mortgage in fraud of creditors, validity of.* *A*, being in insolvent circumstances, mortgaged certain property to *B*, there having been a failure in payment of part of the consideration money. *C* holding a money decree against *A*, impeached the mortgage as fraudulent · *Held*, that the fact that the mortgage was for an amount larger than was really paid, was no reason for not upholding it to the extent that it was supported by a debt existing at the date of the mortgage and that *A* was entitled to a decree for the amount actually paid by him *Chidambaram Chettiar* v *Sami Aiyar, I L. R. 30 Mad. 6*, distinguished. *Ishan Chander Das Sircar* v. *Bishu Sardar, I. L. R. 24 Calc. 825*, followed. *See* CHINA PITCHIAH *v.* PEDAKOTIAH (1913)
**I. L. R. 36 Mad 29**

——— s. 54—*Indian Registration Act (III of 1877), ss. 17 (b), (c) and 49—Agreement of sale—Registration—Possession given subsequently—Deed operating as transfer* The plaintiff's guardian executed in favour of the defendants a registered agreement of sale, and received Rs. 100 The agreement provided that in consideration of the defendants' helping the plaintiff's guardian with money to carry on litigation to recover possession of certain property, the latter agreed to sell half of the property to the defendants when recovered. The suit was brought, the property recovered, and the defendants were put in possession of the moiety. No registered conveyance accompanied the delivery of possession Subsequently the plaintiff brought a suit to eject the defendants, alleging that in the absence of a registered conveyance the title to the property was still in him: *Held*, dismissing the suit, that the transaction was intended to operate as a sale on the recovery of the property and that the deed operated as a transfer

**TRANSFER OF PROPERTY ACT (IV OF 1882)—*contd.***

**——— s. 54—*concld.***

on the fulfilment of the condition. KONDU BIN KANHOJI *v.* VISHNU MORESHVAR (1912)
**I L R. 37 Bom 53**

——— ss. 54, 55 (1) (*f*), 55 (*4*) (*b*)—*Purchase money, non-payment of portion—Sale of, nevertheless complete—Registration of complete conveyance—Non-delivery to purchaser—Intention—Vendor's lien, if may be given effect to in purchaser's suit for possession—Equities—Subsequent purchaser's rights—Costs—False allegations in plaint.* Where it was found that there was no intention on the part of the vendor or the purchaser to postpone the operation of a conveyance till consideration had been actually paid, and the conveyance was executed and registered, but not delivered to the purchaser, and a part of the purchase money remained unpaid *Held*, that the conveyance was completed and title in the property passed to the purchaser. That the vendor had a lien on the land for the unpaid balance of the purchase money, and though the lien does not entitle him after execution of the conveyance to resume possession of the land sold, it gives him the right to keep the title-deeds until payment. A Court of equity can direct the vendor to be again let into possession, if on a sale directed by it for enforcement of his lien, the property is found unsaleable at an adequate price. The right of the purchaser to obtain possession under s. 55 of (*1*) (*f*) of the Transfer of Property Act and the right of the vendor to realise the unpaid balance of the purchase money under s. 55 (*4*) (*b*) may be enforced in one action In this suit by the purchaser for recovery of the land sold, he was directed to deposit in Court the unpaid balance of the purchase money within a time specified, failing which the suit was directed to be dismissed. Certain persons to whom the vendor had again sold the property for consideration, having been joined as parties to the suit, were given liberty to withdraw the unpaid balance of the purchase money to be deposited by the purchaser. The purchaser plaintiff was made liable for the costs of the litigation as he had come to Court with a false plea, *viz.*, that the whole of the purchase money had been paid to the vendor. NILMADHAB PARHI *v.* HARA PROSHAD PARHI (1913)
**17 C. W. N. 1161**

——— ss. 59, 100—*Mortgage—Charge—Attestation—Document attested by one witness only. Held*, that a document which purported to be a mortgage, but which was attested by only one witness, could not operate either as a mortgage or as creating a charge on immovable property within the meaning of s. 100 of the Transfer of Property Act, 1882. *Shamu Patter* v. *Abdul Kadir Ravuthan, I. L. R. 35 Mad. 607*, referred to. COLLECTOR OF MIRZAPUR *v.* BHAGWAN PRASAD (1913) . . . **I. L. R. 35 All. 164**

——— s. 63—*Accession to mortgaged property, mortgagor's right to, if depends on special*

**TRANSFER OF PROPERTY ACT (IV OF 1882)**—*contd.*

——— **s. 63**—*concld.*

*advantage of mortgagee as such in acquiring the accession—Mortgagee also co-owner of the property—Acquisition by mortgagee of rayati holdings in the Property—Mortgagee's right on redemption of mortgage.* Where the plaintiff's share in a mehal was mortgaged to the co-proprietors of the mehal and the mortgagees during the continuance of the mortgage bought in some of the rayati holdings of the mehal from the tenants and obtained possession thereof, separating the lands purchased from those in the possession of the tenants: *Held*, that on redemption of the mortgage, the plaintiff was entitled to get *khas* possession of the lands to the extent of the share in the mehal on payment to the mortgagees of the proportionate share of the expenses incurred in acquiring them. *Per* N. R CHATTERJEA, J—The purchases were accessions to the mortgaged property within the meaning of s. 63 of the Transfer of Property Act. The mortgagee's right to the accessions to the mortgaged property under s. 63 of the Act does not depend upon whether the mortgagee had any special advantage by reason of his position as mortgagee in acquiring the accession *Kishendatt* v. *Mumtaz Ali*, *I. L. R. 5 Calc. 198*, referred to S. 63 of the Act applies to a case where the mortgagee holds the property both as co-proprietor and as mortgagee. RAM BRICH NARAIN SINGH *v* AMBIKA PRASAD SINGH (1913) . . . . **17 C. W. N. 586**

——— **s. 65** (*a*)—

*See* MORTGAGE . **I. L R. 35 All. 48**

——— **ss 85, 90**—

*See* MORTGAGE . **I. L. R. 40 Calc. 342**

——— **s. 91**—

*See* MORTGAGE. **I. L. R. 36 Mad. 426**

——— *Mortgage suit—Attaching creditor if necessary party—Right of purchaser in execution of money decree to redeem purchaser pending attachment in execution of mortgage decree—Attachment, effect of.* Although an attaching creditor is entitled to redeem a mortgage under s. 91, Transfer of Property Act, he has no interest in the mortgaged property A purchaser at the sale in which the attachment culminated has no right to redeem the purchaser at the mortgage sale, or to resist his getting possession of the property. *Ghulam Hussain* v. *Dina Nath*, *I. L. R. 23 All. 467*, *480*, commented on. *Frederick Peacock* v *Madan Gopal*, *I. L. R 29 Calc. 428*, and *Motilal* v. *Karrabuldin*, *I. L. R. 25 Calc. 179*, referred to SHANANDA CHANDRA PAL *v.* SRI NATH RAY CHOWDHURY (1912) **17 C. W. N. 871**

——— **ss. 92 and 93**—*Power of mortgagor to apply for sale of mortgaged properties* In a suit for redemption of a mortgage (the mortgage not being a simple mortgage or a mortgage by way of conditional sale), where the mortgagor fails to pay the mortgage amount according to the decree, he may apply for sale of the mortgaged properties. Paragraph 2 of s. 93, Transfer of Property Act, while giving the defendant mortgagee a right to apply for sale does not take away such right from the plaintiff mortgagor. GOVINDA TARAGAN *v.* VEERAN (1913) . . **I. L. R. 36 Mad. 32**

**TRANSFER OF PROPERTY ACT (IV OF 1882)**—*contd*

——— **s. 92**—*concld.*

——— **s. 106**—

*See* EJECTMENT . **I. L. R. 40 Calc. 858**

——— **s. 108** (*a*) (*e*)—*Lease—Disturbance of possession by paramount title holder—Lessor's liability to indemnify—Lessor's defective title, if a material defect in the property with reference to its intended use.* *R*, the registered proprietor, in possession of the estate left by her husband granted a *zurpeshgi* lease of certain properties to the plaintiff and others. *C*, the brother of the husband of *R*, instituted a suit against *R* and obtained a declaration that on the death of R's husband, he became the rightful owner of the estate. and *R* had no title in it. The plaintiff remained in possession till he was dispossessed by *C*. The plaintiff sued *R* for the recovery of his share of the *zurpeshgi* money and for damages for loss sustained by him in consequence of dispossession. There was no evidence to warrant a finding that the defect in *R's* title was one which the plaintiff could have with ordinary care discovered: *Held*, that s. 108, cl. (*c*) of the Transfer of Property Act is wide enough to include disturbance of possession by a person with a paramount title A defect in the lessor's title is not a "material defect in the property with reference to its intended use" within the meaning of s. 108, cl (*a*). Those words have reference to the nature and condition of the property demised *Held*, further, that s. 108, cl. (*a*) is inapplicable to the present case and the defendant is liable for damages for the interruption of the plaintiff's possession under the provisions of s. 108, cl (*c*). MUKHTAR AHMED *v.* SUNDAR KOER (1913) . . **17 C. W. N. 960**

——— **s. 111, cl.** (*g*)—*Landlord and tenant—Denial of title—Suit for ejectment of tenant—Landlord's intention to take advantage of denial of title to be expressed before suit* The denial of his landlord's title by a tenant, in order to work a forfeiture under s. 111 (*g*) of the Transfer of Property Act, 1882, must be an unequivocal and unambiguous denial: mere non-payment of rent or even the mortgaging of the premises as belonging to the tenant does not necessarily constitute such a denial. A landlord wishing to take advantage of his tenant's denial of title to determine the lease must do some act showing his intention to do so before he can file a suit for ejectment PRAG NARAIN *v.* KADIR BAKSH (1913) **I. L. R. 35 All. 145**

**TRANSFER OF PROPERTY ACT (IV OF 1882)—*concld.***

**s. 130—**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), s. 60 . **I. L. R. 37 Bom. 471**

**TRANSFER OF PROPERTY ACT (IV OF 1882 AS AMENDED BY ACT II OF 1900).**

**s. 130—"*Actionable claim*"—*Claims to proceeds of policy of insurance by depositee of policy and by assignee of policy by an instrument in writing—Transfers by way of security*** The appellant and the respondent were rival claimants to the proceeds of the policy of insurance on the life of their debtor which had been paid into Court by the Insurance Company as a defendant in a suit brought for the money in which the appellant was also a defendant. The appellant relied on an assignment by the debtor of the policy by an instrument in writing; and the respondent based his claim on a deposit of the policy with him by the debtor unaccompanied by any written instrument. *Held* (reversing the decision of an Appellate Bench of the High Court), that the case was governed by s. 130, sub-s (*1*), of the Transfer of Property Act (IV of 1882 as amended by Act II of 1900) which precluded the application in India of the principles of English Law, and the title of the appellant, as being based on an instrument in writing, and so conforming in all respects with the provisions of that section, was absolute as against that of the respondent who acquired no right to the policy or its proceeds by reason of the deposit. The right to the proceeds was an "actionable claim"; and s. 130 covered transfer by way of security, as well as absolute transfers, as appeared from illustration 2 to the section. MULRAJ KHATAU *v.* VISHWANATH PRABHURAM VAIDYA (1912) . . **I. L. R. 37 Bom. 198**

**TREE-PATTA.**

*Effect of cancellation of, on land pattadar—No resumption or grant to the latter—Right of tree-pattadar for the trees even after cancellation as against land-pattadar—Possessory right, protection of, as against trespassers* A person who was in possession until dispossessed by defendants who having no title as owners were mere trespassers, is entitled to rely on his possession and succeed in a suit to eject them. *Narayana Rao* v. *Dharmachar*, *I. L. R. 26 Mad. 514*, and *Subbaroya Chetty* v. *Ayyasami Ayyar*, *I. L. R 32 Mad. 86*, followed. In the absence of proof to the contrary, a cancellation of patta issued by the Government in favour of the plaintiff in respect of trees standing on certain lands for which lands the patta was being issued in favour of defendants, does not amount to a resumption of possession of the trees by the Government or to a grant of them by the Government to the defendants. The only effect of cancellation of the patta for the trees was that the Government no longer

**TREE-PATTA—*concld.***

made any demand on the tree-pattadars for revenue in respect of the trees. The facts that when both pattas were in existence the land-pattadar was credited with whatever revenue was collected from the tree-pattadar, and that on cancellation of tree-patta the whole revenue was payable by the land-pattadar cannot amount to a grant of the trees to the land-pattadar. On the rights of the tree-pattadar and land-pattadar · *Reference under s 39 of Madras Forest Act*, *I. L. R. 12 Mad. 203*, and *Theivu Pandithan* v. *Secretary of State for India*, *I. L. R. 21 Mad. 433*, referred to SENGODA GOUNDAN *v.* VARADAPPAN (1913) **I. L. R. 36 Mad. 148**

**TRESPASS.**

*See* EASEMENT . **I. L. R. 37 Bom. 491**

*See* GRAVE-YARD **I. L. R 40 Calc. 548**

**TRIAL OF CASES**

*Trying cases piecemeal—Practice condemned—Grant—Ekrarnama—Lease or License—Construction—Practice.* Cases ought not to be tried piecemeal: such a method may facilitate the disposal of a case but certainly does not conduce to the administration of justice. MOHIPAL SING *v.* LALJI SING (1912) **17 C. W. N. 166**

**TRUST.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), s. 92 . **I. L. R. 37 Bom. 95**

**1.** *Deed of trust, construction of—Uncertainty—Gift for "religious acts" (dharmakarmarthe) and for "religious purposes" (dharmoddeshe)—Works of public good—Discretion of trustee.* A settler by a deed of trust in the Bengali language, after declaring that for religious acts (*dharmakarmarthe*), with a desire for the spiritual benefit of the deceased forefathers, and to please Vishnu, she made over the properties covered by the deed for religious purposes (*dharmoddeshe*), proceeded to direct that certain *Thakoors* should be worshipped and maintained, and the annual *Durgotsab* performed out of the income of the trust estate, and further, by the sixth clause of the trust deed, provided that out of the income which should remain after incurring the expenses aforesaid a sum not exceeding one thousand rupees should be applied in supporting the poor, the blind and the destitute, and in imparting education, in *upanayan* (assumption of the sacred thread ceremony), in removing marriage difficulties (getting girls married), or in works of public good. It was to be paid at the discretion of the trustee towards dispensaries, hospitals, charitable societies, schools, or any students' education, feeding of the poor, etc, marriage, *upanayan*, etc., excavation and consecration of tanks, etc., in villages having a dearth of water, or in the construction and consecration of *ghâts* and *maths*. The trustee for the time being had under the deed discretion to render assistance beyond a thousand rupees, and had also, full power to decide where or for whose

**TRUST**—*contd.*

education, *upanayan*, or for whose daughter's marriage the same should be applied: *Held*, that such directions, as were contained in the sixth clause of the trust deed, were void and inoperative for vagueness and uncertainty. *Trikumdas Damodhar* v. *Haridas Morarji*, *I. L. R. 31 Bom. 583*, *Grimond (or Macintyre)* v. *Grimond*, [*1905*] *A. C. 124*, *Bai Chadunbai* v. *Dady Nusserwanji Dady*, *I. L. R 26 Bom 632*, *Williams* v. *Kershaw*, *5 Cl. & F. 111*, *Surbomungola Dabee* v *Mohendranath Nath*, *I. L. R. 4 Calc 508*, and *Runchoidas Vandravandas* v *Parvatibai*, *I. L. R 23 Bom. 725*; *L. R. 26 I. A. 71*, referred to. SARAT CHANDRA GHOSE *v* PRATAP CHANDRA GHOSE (1912) **I L. R. 40 Calc. 232**

**2.** ——— *Scheme of management of a temple made by the High Court—Provision in its decree for modification of scheme by itself and for lower Court carrying out modification so made—Application to lower Court for directions involving modification of scheme—Competence of lower Court to entertain such application.* Under a decree of the High Court, the petitioner was appointed High Priest of a temple and the opposite party and another person members of a committee, thereafter on the application of one of the members of the committee the High Court amended its decree in so far as it gave liberty to any person interested to apply to the High Court for any modification of the scheme that might appear necessary or convenient and to apply to the District Judge with reference to the carrying out of the directions of the High Court on such application. Subsequently the members of the committee applied to the District Judge for such directions on the petitioner as involved a modification of the scheme: *Held*, that the application could be entertained only by the High Court. UMESHANANDA DUTTA JHA *v.* RAVANESWAR PRASAD SINGH (1912) . **17 C. W. N. 841**

**3.** ——— *Charitable and religious trust—Appointment of Committee of Trustees and of a superintendent under them—Donor appointed first superintendent—Superintendent, if may be removed by trustee—If may sue for injunction to restrain removal—Contract of service or trust—Remedy.* Where by a deed of charitable and religious endowment, the donor appointed five persons as trustees, reserving to himself the power of removing them for misconduct or non-attendance and nominating and appointing others in their place, and directed that there shall be a salaried superintendent of the endowment who was to be the secretary and executive "hand" of the trust committee, and under whose direct control the "*amlas*" were to work, and the donor appointed himself as the first superintendent and gave the trustees power to appoint successors: *Held*, that there was no trust created in favour of the superintendent and this although the deed provided that the name of every superintendent was to be recorded under the Land Registration Act as "manager" in the place of his predecessor. That on the death of the donor and the appointment of a successor, there was only a contractual relation between the latter and the trustees, the contract being one of service That a power of appointment ordinarily carries with it a power of dismissal unless there is any thing special in the nature of the office or the deed or statute under which a person is appointed shows the contrary. That the superintendent so appointed could not sue in the Civil Court for an injunction to restrain the trustees from dismissing him, his only remedy, if he was wrongfully dismissed, being by an action for damages. The position of a superintendent so appointed and the donor-superintendent distinguished. *Held*, further, that a superintendent who has been dismissed being merely a servant, had no *locus standi* to question the validity of the appointment of the succeeding superintendent. RAM CHUNDER BAJPYE *v* RAKHAL DAS MUKERJEE (1913) . . . . **17 C. W N. 1045**

**TRUSTS ACT (II OF 1882).**

——— **s. 5—**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 60

**I. L. R. 37 Bom. 471**

**TRUSTEE.**

*See* CHURCH . **I. L. R. 36 Mad. 418**

——— **alienation by—**

*See* LIMITATION **I. L. R. 37 Bom. 231**

——— **suit for recovery of office of—**

*See* CIVIL PROCEDURE CODE (ACT XIV OF 1882), S 539.

**I. L. R. 36 Mad. 364**

## U

**ULTRA VIRES.**

*See* LEGISLATION, ULTRA VIRES.

**I. L. R. 40 Calc. 391**

——— ——— *Bengal Tenancy Act (VIII of 1885), s. 101, cls. 2 (a) and 3—"A large proportion of landlords," meaning of—Order passed by Local Government under s. 101, cl. 2 (a), at the instance of landlords having large proportion of interest, effect of—Jurisdiction of Civil Court to question validity of the order, after issue of Notification under the section.* The words "a large proportion of the landlords" in s. 101, cl. 2 (*a*) of the Bengal Tenancy Act, mean a large proportion of the landlords as determined by the interests they hold in the estates. Where, therefore, an application was made by landlords having a large proportion of interest in an estate, to the Local Government for the issue of an order under the said section, and an order was accordingly issued by a Notification in the official Gazette: *Held*, that the order was not *ultra vires* *Held*, further, that it was with the Local Government

**ULTRA VIRES**—*concld.*

the discretion rested to determine whether the application was in due form under the provisions of s. 101, cl. 2 (*a*) of the Act, and after the Local Government had decided that point and had issued the Notification, the jurisdiction of the Civil Court to interfere with the order was barred by cl. 3 of the same section SECRETARY OF STATE FOR INDIA *v.* PURNENDU NARAYAN ROY (1912) . . . I. L. R. 40 Calc. 123

**UNCERTAINTY.**

*See* RELIGIOUS TRUST.
I. L. R. 40 Calc 232

**UNDER-ESTIMATION OF VALUE OF PROPERTY.**

*See* APPEAL TO PRIVY COUNCIL
I. L. R. 40 Calc. 635

**UNDER-RAIYATS.**

*See* EJECTMENT. I. L. R. 40 Calc. 858

**UNITED PROVINCES ACTS.**

*See* NORTH-WESTERN PROVINCE AND OUDH ACT.

**UNITED PROVINCES EXCISE ACT (IV OF 1910).**

——— s. 60—*Unlawful possession of excisable article—Search warrant—Indian Oaths Act (X of 1873), s. 13—Presumption that oath was duly administered* An excise inspector searched the house of a person suspected to be in illicit possession of an excisable article, namely cocaine, and cocaine was found in the house: *Held*, that the subsequent conviction of the person in possession of the said house was not rendered illegal by the fact that the excise inspector had not previously obtained a search warrant. *Emperor* v. *Allahdad Khan, 11 All. L. J. 442*; *I. L. R. 35 All. 358, Emperor* v. *Hargobind, I. L. R. 35 All. 1*, referred to. *Held*, also, that it is a reasonable presumption that an oath has been duly administered to a witness appearing before a Court, although the record of the Court may contain no reference to that fact. EMPEROR *v.* SAYEED AHMAD (1913) . I. L. R. 35 All. 575

——— s. 63—*Criminal Procedure Code, s. 537—Unlawful possession of excisable article—Search warrant—Conviction not invalidated owing to absence of warrant.* Where the superintendent of police and a sub-inspector searched the house of a person suspected of being in illicit possession of excisable articles and such articles were found in the house searched, it was *held* that the conviction of the owner of the house under s. 63 of the United Provinces Excise Act, 1910, was not rendered invalid by the fact that no warrant had been issued for the search, although it was presumably the intention of the Legislature that in a case under s. 63, where it was necessary to search a house, a search warrant should be obtained beforehand. EMPEROR *v.* ALLAHDAD KHAN (1913) . I. L. R. 35 All. 358

**UNITED PROVINCES LAND REVENUE ACT (III OF 1901).**

——— s. 107—

*See* PARTITION ACT (IV OF 1893), SS. 1, 2 AND 3 . . I. L. R. 35 All. 387

——— ss. 107, 111—

1. ——— *Partition—Joint Hindu family—Claim for partition by widow in possession in lieu of maintenance merely, though recorded, solatii causâ, as a co-sharer. Held*, that the widow of a member of a Hindu family who is in possession of a portion of the family property under a family arrangement, in lieu of maintenance merely, is not a co-sharer and cannot in virtue of such possession enforce a claim for partition of the share of which she is so in possession, even though her name may be recorded *solatii causâ* as a co-sharer. *Kailashi Kuar* v. *Badri Prasad, S. A. No 344 of 1913, decided 17th July, 1913*, and *Bhoop Singh* v. *Phool Kower, N.-W. P H C. Rep 368*, and *Jhunna Kuar* v. *Chain Sukh, I. L. R. 3 All. 400*, followed. *Bhupat Singh* v *Mohan Singh, I. L. R. 19 All. 324*, referred to. *Habib-ullah* v. *Kushimba, 3 All. L J. 481*, distinguished PEMA *v.* JAS KUNWAR (1913)
I. L. R. 35 All. 527

2. ——— *Partition—Joint Hindu family—Hindu widow—Claim for partition by widow in possession in lieu of maintenance merely though recorded, solatii causâ, as a co-sharer. Held*, that the widow of a member of a joint Hindu family who is in possession of a portion of the family property under a family arrangement, in lieu of maintenance merely, is not a co-sharer and cannot in virtue of such possession enforce a claim for partition of the share of which she is so in possession, even though her name may be recorded, *solatii causâ*, as a co-sharer. *Bhoop Singh* v. *Phool Kower, N.-W. P. H. C. Rep. 868*, and *Jhunna Kuar* v. *Chain Sukh, I. L R. 3 All. 400*, referred to. KAILASHI KUNWAR *v.* BADRI PRASAD (1913) . I L. R. 35 All. 548

——— ss. 111, 112, 233 (*k*)—*Partition—Hindu law—Joint Hindu family—Minor—No necessity for minor to be specially represented in partition proceedings.* Where a partition of the property of a joint Hindu family in which one of the members was a minor was found to have been properly carried out with due regard to the interests of the minor it was *held* to be no ground for upsetting the partition, were such a course possible having regard to s. 233 (*k*) of the United Provinces Land Revenue Act, 1901, that the minor was not represented in the partition proceedings by a formally appointed guardian In such circumstances a minor member of the family is suitably represented by the managing member or members. BHAGWATI PRASAD *v.* BHAGWATI PRASAD (1912)
I. L. R. 35 All. 126

——— s. 121—*Plaintiff referred to Civil Court—Suit filed within time but subsequently withdrawn—Second suit filed after prescribed period.* Where a Revenue Court acting under s. 111

**UNITED PROVINCES LAND REVENUE ACT (III OF 1901)—*concld.***

**——— s. 121—*concld.***

of the United Provinces Land Revenue Act, 1901, required a party to the case before it to institute to a suit in the Civil Court within three months, and the plaintiff did so, but for some technical reason had to withdraw it with permission to bring a fresh suit, which was in fact filed without delay, but after the three months had expired · *Held*, that the second suit must be considered to be a continuation of the first suit, and it could not, therefore, be held that the plaintiff had not complied with the order of the Revenue Court RANDHIR SINGH *v.* BHAGWAN DAS (1913) **I. L. R. 35 All. 541**

**UNITED PROVINCES MUNICIPALITIES ACT (I OF 1900).**

**——— s. 88—***Municipal Board—Power of Board to order demolition of structure overhanging a public road—Compensation—Offer to pay compensation not a condition precedent to order for demolition.* The owner of a house to which was attached a balcony overhanging a public road repaired the balcony, which had become dilapidated, and made it serviceable, but without obtaining the permission of the Municipal Board thereto. The Board thereupon issued notice to the house-owner under s. 88 of the Municipalities Act, 1900, to remove the balcony, and, in default of compliance, prosecuted him. *Held*, that the board had power, under s 88, cl (2), of the said Act, to order the removal of the balcony without assigning any reason, and that it was not necessary for the Board, in the case of a notice issued under s. 88, to tender or express its willingness to pay compensation in respect of the structure the demolition of which was ordered. EMPEROR *v.* NANNA MAL (1913) . . **I. L. R. 35 All. 375**

**——— s. 128 (*h*) (*i*)—***Municipal Board—Power of Board to make rules—Rules regulating use by hawkers of patries of public roads Held*, that the United Provinces Municipalities Act, 1900, did not empower a Municipal Board to make rules regulating the sale or exposure for sale of goods in streets or public places under the control of the Board. EMPEROR *v.* IMAMI (1912) **I. L. R. 35 All. 24**

**——— s. 187—**

*See* NORTH-WESTERN PROVINCES AND OUDH MUNICIPALITIES ACT, s. 10. **I. L. R. 35 All. 308**

——— *Municipal elections—Rules framed by Local Government for regulation of elections—Petition by defeated candidate—Appeal—Procedure—"Decree"—"Order."* *Held*, on a construction of r. 42 of the rules framed by the Local Government under s. 187 of the Municipalities Act, 1900, for the regulation of municipal elections, that the term "competent Court" as used in r 42 means a civil Court of competent jurisdiction with reference to the valuation given by the petitioner in his petition. *Gur Charan Das* v. *Har Sarup, I. L. R. 34 All. 391*, followed. *Held*, also that no appeal lies from the order of a competent Court passed on an election petition under r. 42 above referred to *Sundar Lal* v. *Muhammad Faiq, 16 Oudh Cases 36*, approved. *Raghunandan Prasad* v. *Sheo Prasad. I. L. R. 35 All. 308*, and *Sabhapat Singh* v. *Abdul Ghafur, I. L. R. 24 Calc. 107*, referred to. KHUNNI LAL *v.* RAGHUNANDAN PRASAD (1913) **I. L. R. 35 All 450**

**——— s. 187 (*1*) (*h*)—***Municipal election—Rules framed by the Local Government for regulation of elections—Validity of rules—Petition against successful candidate—Appeal.* *Held*, (I) that the provisions of s. 187 of the United Provinces Municipalities Act which gave power to the Local Government to make rules "generally for regulating all elections under the Act," were wide enough to include rules for the filing and decision of election petitions; and (II) that no appeal lies from the order of a "competent Court" passed on an election petition under r. 42 of the rules framed by the Local Government under s. 187 (*1*), cl. (*h*) of the Act. *Khunni Lal* v. *Raghunandan Prasad, I. L. R. 35 All. 450*, followed. *Sundar Lal* v. *Muhammad Faiq, 16 Oudh Cases 36*, approved. NAND RAM *v.* CHOTE LAL (1913) **I. L. R. 35 All. 578**

**USER.**

*See* TRADE-NAME **I. L. R. 40 Calc. 570**

**USING FALSE TRADE MARK.**

*See* TRADE-MARK **I. L. R. 40 Calc. 281**

**USUFRUCTUARY MORTGAGE.**

*See* INTEREST . **I. L. R. 40 Calc. 154**

*See* LANDLORD AND TENANT. **I. L. R. 40 Calc. 870**

## V

**VALUATION OF SUIT.**

*See* COURT-FEE . **I. L. R. 40 Calc. 615**

——— *Suit for possession of land and mesne profits—Value changed in the course of the suit—Appeal to the District Court heard and entertained at earlier stage on the basis of original valuation—Application for assessment of the mesne profits—Total claim beyond District Court's appellate jurisdiction—Objection as to jurisdiction not taken in District Court—Objection, if may be taken in High Court by way of appeal—Civil Procedure Code (Act V of 1908), s. 99—Appeal, if lies—Jurisdiction, objection to, waiver of—Return of memorandum of appeal —Presentation in proper Court out of time—Limitation Act (IX of 1908), s 5—Costs.* A suit for recovery of land with mesne profits instituted in the Court of a Subordinate Judge was originally valued at Rs. 2,100, Rs. 1,725

**VALUATION OF SUIT**—*concld.*

for the land and Rs 375 as the approximate amount of mesne profits for three years antecedent to the suit The suit was decreed by the Subordinate Judge and the decree affirmed on appeal by the District Judge. Plaintiff thereafter appealed for assessment of mesne profits valuing his claim at Rs. 7,549. The Subordinate Judge having allowed only Rs. 962, the plaintiff appealed to the District Judge valuing his claim in the memorandum of appeal at Rs. 2,728 ; his appeal was allowed, whilst the defendant's cross-appeal against the Subordinate Judge's decree for Rs. 962 was dismissed The defendant appealed to the High Court, *inter alia*, on the ground that the appeal to the District Judge was incompetent: *Held*, that the real value of the suit was Rs 5,415 (Rs. 1,725 and Rs. 962, and Rs 2,728), and the appeal from the order of the Subordinate Judge lay to the High Court and not to the District Judge. That the defendant was not precluded from raising the question of jurisdiction on appeal by the fact that he had omitted to take exception to the District Judge's jurisdiction in his Court and had himself filed a cross-objection. The principle that parties cannot by consent or by stipulation invest a Court with jurisdiction is applicable to cases wherein the jurisdiction is dependent upon the value of the subject-matter in controversy. *Merrill* v. *Petty, 16 Wallace 338*, relied on. Where there is a total want of jurisdiction over the subject-matter in controversy, the objection cannot be waived. *In re Aylmer, 20 Q. B. D. 258, Jones* v. *Owen, 5 D. & L. 669 ; 18 L. J. Q. B 8, Mayor of London* v *Cox, L. R 2 H. L. 239*, relied on. That an appeal to the High Court lay against the decree made without jurisdiction by the District Judge. Where jurisdiction is usurped by a Court in passing an order against which an appeal would lie if it had been passed with jurisdiction, an appeal against the order cannot be defeated on the ground that the order was made without jurisdiction. *Bindeswari Charan* v. *Lakpat Nath, 15 C. W. N. 725*. That the principle that no appeal lies where the Court has been constituted an arbitrator by the parties, had no application to the present case. The High Court directed the memorandum of appeal to the District Judge to be returned for presentation in the High Court, but as the memorandum of appeal was already in the High Court it was ordered that the memorandum be treated as presented in the High Court on that date and it was ordered in the exercise by the High Court of its discretion under s. 5, Limitation Act, that the time between the presentatian of the appeal in the District Judge's Court and the order for return made by the High Court be deducted. As the objection to jurisdiction was not raised before the lower Appellate Court, each party was directd to pay his own costs RAMJIT MISSER *v.* RAMADOR SINGH (1912).

**17 C. W. N. 116**

**VATAN.**

*See* RES JUDICATA.

**I. L. R. 37 Bom. 224**

*See* VATAN DESHMUKHI.

**VATAN**—*concld.*

1.——————————— *Patilki Vatan—Court-sale of the vatan lands in execution of decree against holder of vatan—Levy of full assessment by Collector—Character of vatan land not changed by the levy—Suit by next holder of vatan within twelve years of the death of his predecessor—Limitation.* The plaintiff's father held the land in dispute as *patilki vatan* which were sold in 1875 to the defendant at a Coutr-sale held in execution of a decree. The Collector thereupon levied full assessment on the land and assigned the assessment for remuneration for service. The plaintiff's father died in 1905 In 1909 the plaintiff brought a suit against the defendant to recover possession of the land. The lower Courts dismissed the suit on the grounds that the land had ceased to be *vatan* and that the suit was brought beyond time. The plaintiff appealed: *Held*, that the land did not lose its character as *vatan* merely because the Collector levied full assessment and altered the mode of remuneration. *Held*, also, that the plaintiff's suit was in time, since on the death of the plaintiff's father in 1905, the plaintiff became entitled to the land as the next holder of the *vatan*, and the defendant's interest in the land as the vendee of the right, title and interest of the plaintiff's father came to an end. SHIVRAM NARSINGRAO *v* NARAYAN KULKARNI (1912).

**I. L. R. 37 Bom. 81**

2.——————————— *Suit to recover a share in the profits of vatan—Suit for money had and received—Amount of the claim under Rs. 500—Small Cause Court nature—No second appeal.* A suit for the recovery of a share in the profits of a Kulkarni vatan is a suit for money had and received by the defendant for the use of the plaintiff, and the claim being under Rs 500, it was of a Small Cause nature in respect of which no second appeal lay. BHIKAJI HARI *v.* RADHABAI (1913)

**I. L. R. 37 Bom. 700**

**VATAN DESHMUKHI.**

*See* HEREDITARY OFFICES ACT (BOM. III OF 1874), SS. 11, 11A.

**I. L. R. 37 Bom. 37**

**VENDOR AND PURCHASER.**

*See* CONTRACT . **I. L. R. 35 All. 325**

*See* REVIEW . **I. L. R. 40 Calc. 140**

——————————— *Sale to raise funds for litigation—Transfer whilst vendor was out of possession—Agreement depending on success of litigation—Transfer of undivided share in joint ancestral property—Interest in property giving right to sue—Vendee and provider of funds made co-plaintiffs.* The original plaintiffs in the two suits out of which these appeals arose were, in one suit the sons, and in the other the grandson of the heads and managers of two distinct joint Hindu families, owners of an estate in Oudh, by whom alienations of the joint ancestral property had been made in favour of the appellant, whom they sued in ejectment to set aside those alienations on the ground that the managing members had no power to make them.

**VENDOR AND PURCHASER**—*concld*

As they required funds to enable them to prosecute the suits, they entered into agreements with a third person (who was made a co-plaintiff in the suits and was now respondent) to the effect that "in the share of each of them in property he will be a co-sharer of a one-half share and the remaining one-half share will belong to us. . . He will bear the entire expenses in connexion with the suit, and in case of success he will be entitled to proprietary possession of the above mentioned one-half share, or one-half of the share which may be decreed, which can remain joint or be partitioned by him as he pleases' In the course of the litigation the original plaintiffs compromised the suits with the appellant and withdrew from them leaving the respondents to prosecute them alone *Held* (reversing on this point the decision of the Courts in India), that the agreements (which constituted his only right to sue) conferred upon the respondent no present right to the possession of any share in the property in suit He would only have the right to possession in case of success, and success had not been achieved. Until then he was merely a co-owner in a certain undivided share of the property. There was no present grant or assignment to him of any separate share of the property, divided or undivided, and he could not therefore maintain the suit. *Achal Ram* v. *Kazim Husain Khan, I. L. R. 27 All. 271 ; L. R. 32 I. A. 113,* distinguished. BASANT SINGH *v.* MAHABIR PRASAD (1913) . . . **I. L. R. 35 All. 273**

**VERBAL APPLICATION.**

*See* SANCTION FOR PROSECUTION
**I. L. R. 40 Calc. 423**

**VERBAL NOTICE.**

*See* EJECTMENT . **I. L. R. 40 Calc. 858**

**VERDICT.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), SS 297, 303, 304
**I. L. R. 36 Mad. 585**

**VERDICT BY CASTING LOTS.**

*See* JURY, TRIAL BY.
**I. L. R. 40 Calc. 693**

**VEXATIOUS CHARGE.**

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 250.
**I. L. R. 37 Bom. 376**

**VOLUNTARINESS**

*See* CONFESSION . **I. L. R. 40 Calc. 873**

**VOLUNTARY PAYMENT.**

*Suit to recover money paid under decree—Wrongful interference of defendant —"Coercion"—Contract Act (IX of 1872), ss. 15, 69, 70, 72 Illus. (b)—Civil Procedure Code 1882, s. 278 et seq.—Claims to attached property—Money paid under compulsion—Money paid under process of decree against third person.* The appellant (plaintiff) stated in his plaint that he was the proprietor of the Delhi Cotton Mills against which

**VOLUNTARY PAYMENT**—*concld.*

the respondent Bank (defendant) had an unsatisfied decree ; that the respondent on 15th August 1902 applied for the attachment of the property and premises of the mills, wrongfully stating that they were the property of the Delhi Cotton Mills Company, attached the property on 20th August 1902. knowing that it belonged to the plaintiff, and dispossessed him ; that "he has suffered considerable damage by the said acts of the defendant, and as he was by such acts practically ousted from all the machinery and mills, and could not work them, and the whole of such damage would be very considerable, and part of it most difficult to prove, and it was probable that by objection to such attachment under the Civil Procedure Code a considerable time would elapse before he could obtain an order setting aside the attachment" the plaintiff was compelled to pay the balance due to the defendant under the decree against the Delhi Cotton Mills Company, under protest, on 27th August 1902. In a suit brought for a return of the money so paid. and damages for the alleged illegal acts of the defendant, the defence (*inter alia*) was that "the suit as framed would not lie," and the case was argued on a preliminary issue. the proceedings being of the nature of a demurrer. *Held* (reversing the decision of the Courts in India), that the plaintiff was entitled to recover the money so paid as being an involuntary payment produced by coercion, namely, the wrongful interference of the defendant with his full and free enjoyment of his own property. *Dulichand* v. *Ram Kishen Singh, I. L. R 7 Calc. 648; L. R. 8 I. A 93,* followed. The fact that the sale was not inevitable in the present case was not relevant. The greater or less probability of a sale taking place did not affect the *ratio decidendi* in that case which is that the payment was made under the force of the execution proceedings, and that in India, as in England, such a payment is regarded by the law as being made under compulsion The procedure provided in the Civil Procedure Code referring to claims to attached property (s. 278 *et seq*) is merely permissive, being analogous to the procedure by interpleader in England But the fact that such a procedure is open to him, if he chooses to adopt it, in no way interfered with the plaintiff's right to take any other lawful alternative. S 72 of the Contract Act (IX of 1872) is not exhaustive. The meaning of the word "coercion" used in that section is not controlled by the definition in s. 15, but is used in its general and ordinary sense. The definition in s 15 is expressly inserted for the special object of applying to s. 14, *i.e.*, to define what is the criterion whether an agreement was made by means of a consent extorted by coercion, and does not control the interpretation of "coercion" when the word is used in other surroundings. Ss 69 and 70 of the Contract Act do not refer in any way to remedies against the wrongdoer, and are therefore irrelevant to the question raised in this appeal. KANHAYA LAL *v* NATIONAL BANK OF INDIA, LTD (1913)
**I. L. R. 40 Calc. 598**

**VRITTI.**

——— *Recitation of Purans—Conferring hereditary office and granting lands for performance of office—Grant of lands burdened with the performance of service—Resumability of lands.* Where a hereditary office, *e g*, of *vritti* for the reciting of Purans, is created and bestowed hereditary upon the grantee from generation to generation, and lands are assigned as remuneration therefor, the lands so granted are not resumable. Where there is an interest in land coupled with a duty, and the grant is not forthcoming, so that its actual terms may be known, it must always be a matter of great difficulty, and no more than a mere conjecture, to decide whether the interest was so coupled with the duty that the latter could confidently be said to have been the sole motive and condition of the former In such a case the interest in land is resumable on failure or refusal to perform the duty. In cases of grants burdened with service resumable for failure or refusal to perform that service, the Court would ordinarily require very strong and conclusive evidence before disturbing the practice which has persisted for a long time. MADHWACHARYA *v* SHRIDHAR NARASINHA (1913) . . **I. L. R. 37 Bom. 409**

## W

**WADHWAN CIVIL STATION.**

——— *British India—Bombay Ábkári Act (Bombay Act V of 1878), s. 43—Bháng—Importation—Carrying bháng by rail from Wadhwan Civil Station to Viramgam* The accused was charged with having imported into the Presidency of Bombay *bháng* (an intoxicating drug), an offence punishable under s 43 of the Bombay Ábkári Act (Bombay Act V of 1878), inasmuch as he carried with him twenty tolas of *bháng* from Wadhwan Civil Station to Viramgam by rail: *Held*, that the Civil Station at Wadhwan was not a part of British India, and the accused was guilty of the offence with which he was charged. *Triccam Panachand* v. *The Bombay Baroda and Central India Railway Company, I. L. R. 9 Bom. 244*, not followed. *Queen Empress* v. *Abdul Latib valad Abdul Rahiman, I. L. R. 10 Bom. 186*, followed. EMPEROR *v.* CHIMANLAL (1912). . . . . **I L. R. 37 Bom. 152**

**WAGER.**

——— *Defence of wagering in the case of transactions apparently genuine—Necessity for the defendant to prove that both parties entered into the transaction with the intention of treating it as a wager—Teji mandi transactions.* the defendant dealt to a large extent in silver with the plaintiffs, buying silver for forward delivery and afterwards settling the plaintiff's claims by selling an equal quantity of silver to the plaintiffs The plaintiffs sued the defendant for balances due on these transactions and also for moneys due on certain "*teji mandi*" transactions between the

**WAGER**—*concld.*

parties, that is transactions in which the purchaser buys the option to buy or sell goods at a future date, but the plaintiffs afterwards relinquished their claim in respect of the "*teji mandi*" transactions *Held*, that the Court will not lightly favour gambling defences In order that a transaction apparently genuine may be set aside as a wagering transaction, it must be shown that it was known to be a wager by both the parties to it who acted upon that knowledge with no intention of treating the transaction as anything but a wager. *Held*, further, the general rule in this country is that "*teji mandi*" transactions must be regarded as wagering transactions, and the onus of proving that they are not such would lie heavily on the party so alleging. *Kesarichand* v. *Merwanji, 1 Bom. L. R. 263*, followed. JESSIRAM JUGGONATH *v.* TULSIDAS DAMODAR (1912). . **I. L. R. 37 Bom. 264**

**WAGERING.**

——— defence of—

*See* INTERROGATORIES
**I. L. R. 37 Bom. 347**

**WAIVER.**

*See* NOTICE . . **I. L. R. 40 Calc. 503**

**WAJID-UL-ARZ.**

*See* PRE-EMPTION—WAJIB-UL-ARZ.
**I. L. R. 35 All. 478**

**WAKF.**

——— by dedication or user—

*See* MAHOMEDAN LAW—ENDOWMENT.
**I L. R. 40 Calc. 297**

*See* MAHOMEDAN LAW—WAQF
**I. L. R. 35 All. 68**

*See* WAQF.

——— *Possession—Relations of Mutawali with beneficiaries—Invalidity of wakf—Evidence Act (I of 1872), ss. 115 and 116—Estoppel—Resulting Trust—Limitation Act (IX of 1908), s. 10—Life estate—Shaffei Mahomedans.* On 16th June 1851 F., a Shaffei Mahomedan lady, executed a deed in the nature of a *wakf*, whereby she settled certain immovable property in trust for her granddaughter M for life and thereafter on her descendants from generation to generation, and in default thereof on the settlor's husband's relatives and their descendants from generation to generation in perpetuity, and in default with an ultimate trust for the education of Mahomedan youths. The settlor's husband was appointed first trustee or Mutawali, and provision was made in the deed for a due succession of Mutawalis. The first Mutawali, and after his death his executors acting as Mutawalis during the minority of his eldest son S. A., paid the rents and profits to M and after her death to her son M. H and her daughter A in equal shares. In 1867 S. A attained his majority and took over charge as Mutawali, and in or about 1873 handed over charge of the property to the beneficiaries, retaining possession of the trust-deed M. H. died in 1892, leaving one son M. A. who in his turn shared the rents with A. until

**WAKF**—*contd.*

her death in 1901 when he took the whole, until he died in 1905 leaving him surviving his mother and two widows. In 1906 the mother and two widows, being in possession, filed a suit praying for a declaration that the trust-deed was void, and that they with certain others were entitled to the property. The trust-deed was held to be invalid, and a consent-decree was eventually passed to the effect that the property should be divided, subject to a small provision for a certain charitable purpose, in equal shares between the Mutawali on the one hand, and the plaintiffs and others on the other. The present plaintiff, however, who was one of the parties to the above proceedings, proved to have been insane at the time and subsequently having regained his sanity, filed the present suit claiming the same relief as that claimed by the plaintiffs in the suit in 1906, and upon the same ground, namely, that M was entitled absolutely to the settled property. The suit having been dismissed, the plaintiff appealed and the heirs of the original settlor, F, were brought on the record under cover of the Administrator-General who took out letters of administration to F's estate, and consented to be bound by all proceedings. *Held*, that the trust-deed was void as being an attempt to create a perpetuity in the nature of a family settlement under the guise of a *wakfnama*. *Held*, further, that those claiming under M had obtained possession of the property from the Mutawali in the guise of beneficiaries and on the footing that the *wakfnama* was a valid document, and thus, under ss 115 and 116 of the Evidence Act (I of 1872) could not be permitted to deny that the person from whom the possession was claimed had a title to such possession when it was handed over *In re Anderson*, [*1905*] *2 Ch 70*, distinguished *Held*, therefore, that for the purposes of this suit, as between the parties other than the administrator of F's estate, the *wakfnama* must be considered as a valid document, and thus, when the limitations in favour of M.'s descendants came to an end on the death of M A. in 1905, the remainder for the benefit of the settlor's husband's descendants took effect, and the present Mutawali (a direct descendant of the settlor's husband) was entitled to the property both as trustee and as beneficiary. *Held*, finally, that the administrator of F.'s estate could only claim under a resulting trust in favour of the settlor, and as such trust did not in the circumstances fall within the scope of s. 10 of the Limitation Act (IX of 1908) the claim had long been barred. *Kherodemoney Dossee* v. *Doorgamoney Dossee*, *I. L R 4 Calc 455*, and *Vundravandas* v. *Cursondas*, *I L R. 21 Bom 646*, discussed and followed. View expressed in *Cassamally Jairajbhai* v. *Sir Currimbhoy Ebrahim*, *I L. R. 36 Bom 214*, not approved. *Quœre*: Whether the principle that Mahomedan law does not recognize life-estates applies to Shaffoi Mahomedans? MAHOMED IBRAHIM *v.* ABDUL LATIFF (1912) . **I. L. R 37 Bom 447**

**WAQF.**

*See* WAKF

**WAQF**—*concld.*

*See* CIVIL PROCEDURE CODE, 1908, s. 92 (*1*) . . . **I. L. R. 35 All. 98**

*See* MAHOMEDAN LAW—WAKF.

*See* CIVIL PROCEDURE CODE, 1908, s 92 . . **I. L. R. 35 All. 459**

*See* MAHOMEDAN LAW—WORSHIP. **I. L. R. 35 All. 197**

**WARRANT**

*See* ATTACHMENT **I. L. R. 40 Calc. 849**

*See* CRIMINAL PROCEDURE CODE, SS. 55, 56, 110 . **I. L. R. 35 All. 407**

——— *Warrant issued by Civil Court to bailiff—Bailiff, who is—Effect of endorsement by Nazir—Execution by peon beyond time fixed by Nazir but within date when warrant returnable—Peon's custody, if lawful—Rescuing from such custody, if offence—Indian Penal Code (Act XLV of 1860), s 147—Civil Procedure Code (Act V of 1908), O. XXI, r 25.* Where a warrant issued by a Civil Court was addressed "to the bailiff" and made returnable on the 30th August and the Nazir of the Court endorsed it with a direction to a particular peon to execute it within the 25th August, and the peon executed it between the 25th and the 30th August: *Held*, that the fact that the warrant is addressed to the bailiff shows that it is the person who actually makes the seizure who is authorized by it, namely, the peon, who thus derived his authority from the Court which issued the warrant, and not from the Nazir who endorsed it, and the execution of the warrant by the peon subsequent to the date fixed by the Nazir and prior to that on which it was made returnable by Court was lawful and the rescuing of property attached from his custody constituted an offence *Per* COXE, *J*—The term bailiff should not be confined to the Nazir. O. XXI, r. 25 of the Civil Procedure Code shows that the warrant is referred to the officer entrusted with the execution of process and it is clear from the terms of that section that that officer is not the Nazir but it is the peon. *Dharam Chand* v. *Queen-Empress*, *I. L. R. 22 Calc 597*, distinguished. SUBED ALI *v.* KING-EMPEROR (1913) . . . **17 C. W. N. 941**

**WARRANT CASE.**

*See* CRIMINAL PROCEDURE CODE, 1898, ss 248, 258, 345. **I. L. R. 37 Bom. 369**

**WELL.**

*See* LANDLORD AND TENANT **I. L. R. 35 All. 292**

**WIDOW.**

*See* HINDU LAW—ADOPTION **I. L. R. 37 Bom. 107, 598**

**WIFE.**

——— **rights of—**

*See* JEWISH LAW . **I. L. R. 40 Calc. 266**

**WILL.**

*See* DOCTRINE OF SATISFACTION. **I. L. R. 37 Bom. 211**

*See* HINDU LAW—WILL.

*See* NAIKINS . **I. L. R. 37 Bom. 116**

*See* SUCCESSION ACT (X OF 1865).
**I. L. R. 37 Bom 644**

*See* SUCCESSION ACT (X OF 1865), s. 244
**I. L. R. 35 All. 448**

——— **construction of—**

*See* HINDU LAW—ADOPTION.
**I. L. R. 37 Bom. 107**

*See* HINDU LAW—WILL
**I. L. R. 40 Calc 274**

——— **statement in—**

*See* HINDU WIDOW.
**I. L. R. 40 Calc. 555**

1 ——— *Republication—Succession Act (X of 1865), ss. 105, 159—Codicil—Death of testator within one year—Repair of graves—Charitable bequest—Conditions . Election of Deacons, Communion Service—Gift-over to another charity—Perpetuities.* The testator died on the 8th July, 1909, leaving as next-of-kin a nephew and leaving a will dated the 14th April, 1884 and four codicils. The testamentary dispositions included certain charitable and religious bequests. The last two codicils dated the 15th December, 1906 and the 19th December, 1908, respectively, were not deposited according to the provisions of s. 105 of the Succession Act; they did not, however, purport to revoke the will, but in effect republished the will: *Held*, that, in the circumstances, the will as modified by the codicils was operative. *Hopwood* v. *Hopwood, 7 H. L. Cas 728, In re Moore. Long* v. *Moore, (1907) 1 Ir. Rep. 315*, referred to. A direction that the will shall not have any effect (beyond proving the same) for at least two years from the arrival of the news of the testator's death, operated merely as a postponing clause, and did not invalidate the will. A direction to trustees to look after and keep in proper repairs certain graves and to pay for the expenses of such repairs in perpetuity out of the estate, was not for charitable uses, and was void and inoperative. *Hoare* v. *Osborne, L. R 1 Eq. 585, Mellick* v. *The President and Guardians of the Asylum (1821) Jac 180, In re Vaughan Vaughan* v. *Thomas, L. R. 33 Ch. D. 187, In re Rogerson. Bird* v. *Lee, [1901] 1 Ch. 715*, referred to. *In re Tyler. Tyler* v. *Tyler, [1891] 3 Ch. 252*, distinguished. A bequest in favour of the Lower Circular Road Baptist Church was subject to, *inter alia*, the following conditions: (*a*) that no ordained minister or missionary be ever elected as a deacon of the church, or be allowed to canvass for votes; (*b*) that at communion two cups one of fermented, one of unfermented, wine should be provided; (*c*) that the deacons do not introduce any innovation into the practice of the church. In the event of the non-fulfilment of the conditions, there was a gift-over in favour of the Howrah Baptist Church and other charitable and religious institutions: *Held*, that there was nothing illegal or impossible in the conditions: and inasmuch as the conditions had not been fulfilled the gift-over came into operation. *In re Robinson Wright* v. *Tugwell, [1892], 1 Ch. 95*, distinguished. An immediate gift to a charity for charitable uses, with a gift-over on an event which may be beyond the ordinary limit of perpetuities to another charity, is not invalid. *Christ's Hospitals* v. *Grainger, 1 Mac. & G. 460, In re Tyler. Tyler* v. *Tyler, [1891], 3 Ch 252*, followed. *In re Bowen. Lloyd Phillips* v. *Davis, [1893] 2 Ch. 491, In re Stratheden and Campbell, [1894] 3 Ch. 265, Chamberlayne* v. *Brockett, L. R 8 Ch. App. 206*, distinguished. ADMINISTRATOR-GENERAL OF BENGAL *v.* HUGHES (1912).
**I. L. R 40 Calc. 192**



2. ——— ——— *Construction of will—Rule of justice, equity and good conscience—Devise to eldest son and his lawful male children according to law of inheritance—Mortgages made by testator as full owner and mortgages made by son with an estate for life only—Rights of mortgagees—Alternative case set up on appeal—Costs.* T. S., a domiciled resident of the North-Western Provinces of India, died on the 9th of November, 1864, leaving a will, dated the 22nd of October, 1864 [and therefore before the Indian Succession Act (X of 1865) came into force] whereby he made provisions that certain villages, houses and other property should "at my demise descend to my eldest son T. B. S. and to his lawful male children according to the law of inheritance, and in the event of my eldest son T. B. S dying without lawful male children, to my female children, or in the event of their death to the female children born in wedlock of my sons in succession." The testator had in 1863 mortgaged his property to the extent of Rs. 50,000 with interest, and his son T. B. S., after he succeeded to the property further mortgaged it in 1867, 1869 and 1872, and in execution of decrees obtained against him on those mortgages the property was sold and his interest therein was acquired by the various auction purchasers T. B. S. died in 1900, without lawful male children and was succeeded by the second son of the testator, the present appellant, who in 1905 and 1906 brought the present suits for ejectment against the auction purchasers, in which he prayed for decrees for "full proprietary possession" and the suits were dealt with on that footing in the Courts in India, the High Court, however, only dismissing the suits because there was no specific claim for redemption. On his appeal, part of the appellant's case was that the High Court instead of dismissing the suits, should have made decrees for possession conditional upon payment of the debts binding on the estate of the testator; and during the hearing it was conceded by counsel that on the construction of the will the appellant was only a life-tenant of the property. *Held*, that the regulation of the succession under the will was to be determined by the rule of "justice, equity and good conscience," that the bequest was to be read in its entirety and together, and that so read there was in

WILL—*concld.*

it no intention that his son T. B. S should have an absolute ownership the testator intended to regulate the succession after the death of T. B. S and settle the mode of the subsequent enjoyment of the property, and such detailed regulations were only natural, necessary and entirely in place if T. B S. was intended to be merely a tenant for life. *Held*, therefore, that the rights under mortgages granted by T B. S. ceased at his death, and that the appellant, as the next male heir, was entitled to the enjoyment of the estate for life free from any rights so acquired The case, however, was very different with regard to the rights acquired under mortgages granted by the testator himself. Even if T. B. S. renewed such mortgages, the right of the mortgagees would not be prejudiced thereby, the renewal of a mortgage by a person with a limited interest in the estate not operating as a discharge of debts effectually secured upon the radical right The appellant accordingly was not entitled to possession until full satisfaction had been made of the rights of all mortgagees and their successors under mortgages granted by the testator. The appeals were allowed and the suits remitted to the High Court on that footing. The alternative case set up by the appellant on appeal was only permitted by their Lordships to be the ground of judgment, because it seemed possible in that way to construct the material for a just decision of the true rights of the parties concerned, which would be best for the interests of all and prevent further litigation. SKINNER *v.* NAUNIHAL SINGH (1913).
**I. L. R. 35 All. 211**

**WINDING UP.**

*See* COMPANIES ACT (VI OF 1882), S 169 . . . **I. L. R. 35 All. 177**

*See* COMPANY **I. L. R. 35 All. 538**

**WITHDRAWAL OF SUIT.**

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O XXIII, R. 1
**I. L. R. 37 Bom. 682**

**WITNESS.**

*See* BAR COUNCIL, RESOLUTIONS OF.
**I. L R. 40 Calc. 898**

——— statement of—

*See* PENAI CODE (ACT XLV OF 1860), S. 499 . **I. L. R. 36 Mad 216**

**WORDS AND PHRASES.**

——— "a large proportion of the landlords."

*See* ULTRA VIRES **I. L. R. 40 Calc. 123**

——— "business"—

*See* RECEIVER . **I. L. R. 40 Calc. 678**

——— "cause of action"—

*See* PARTITION . **I. L. R. 36 Mad. 151**

**WORDS AND PHRASES**—*contd.*

——— complaint"—

*See* CRIMINAL PROCEDURE CODE, SS. 4 AND 195 (*1*) . **I. L. R. 35 All. 8**

——— "court"—

*See* CRIMINAL PROCEDURE CODE (ACT V OF 1898), S. 195.
**I. L. R. 37 Bom. 365**

——— "decree"—

*See* CIVIL PROCEDURE CODE, 1908, SS 2, 104, 148 . **I. L. R 35 All. 582**

——— "decree holder"—

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), O. XXI, R. 89.
**I. L. R. 37 Bom. 387**

——— "dwell or carry on business or personally work for gain"—

*See* JURISDICTION.
**I. L. R. 40 Calc. 308**

——— "emoluments of an office"—

*See* PENSIONS ACT (XXIII OF 1871).
**I. L. R. 36 Mad. 559**

——— "enforcing a right"—

*See* PENAL CODE (ACT XLV OF 1860), SS. 141, 143 . . **17 C. W. N. 1132**

——— "estate"—

*See* OUDH ESTATES ACT (I OF 1869), SS. 2, 3, 8, 10, 22.
**I. L. R. 35 All. 391**

——— "final decree"—

*See* ESTATES LAND ACT (MADRAS I OF 1908) . . **I. L. R. 36 Mad. 439**

——— "immovable property"—

*See* GENERAL CLAUSES ACT (X OF 1897), S. 3 (*25*) . **I. L. R. 35 All. 156**

——— "just cause"—

*See* LETTERS OF ADMINISTRATION.
**I. L. R. 40 Calc. 50**

——— "just debts"—

*See* HINDU LAW—ALIENATION.
**I. L. R. 40 Calc. 288**

——— "land"—

*See* AGRA TENANCY ACT (II OF 1901), S. 4 ; CH. X . **I. L. R. 35 All. 200**

——— "landlord of a holding"—

*See* ENHANCEMENT OF RENT.
**I. L. R. 40 Calc. 29**

——— "mánpán"—

*See* CIVIL PROCEDURE CODE (ACT V OF 1908), S. 9, SCH. II, S. 20.
**I. L. R. 37 Bom. 442**

**WORDS AND PHRASES**—*contd.*

———— "matter directly and substantially in issue"—

*See* ENHANCEMENT OF RENT.
**I. L. R. 40 Calc. 29**

———— "misbehaviour"—

*See* BOMBAY REGULATION (II OF 1827), S. 56 . . **I. L. R. 37 Bom. 354**

———— "place"—

*See* PREVENTION OF GAMBLING ACT (BOM IV OF 1887), S. 4, CLS (*a*), (*c*)
**I. L. R. 37 Bom. 651**

———— "presentation"—

*See* REGISTRATION ACT (XVI OF 1908), SS 31, 32, 52, 87.
**I. L. R. 35 All. 34**

———— "proprietor"—

*See* NORTH-WESTERN PROVINCE AND OUDH LAND REVENUE ACT (XIX OF 1873), SS. 146, 148, 167.
**I. L. R. 35 All. 190**

———— "suit for land"—

*See* LETTERS PATENT (AMENDED) OF THE BOMBAY HIGH COURT CL. 12.
**I. L. R. 37 Bom. 494**

———— "taluqdar"—

*See* OUDH ESTATES ACT (I OF 1869), SS. 2, 3, 8, 10, 22.
**I. L. R. 35 All. 391**

———— "trade"—

*See* RECEIVER . **I. L. R. 40 Calc. 678**

———— "useless or inoperative"—

*See* LETTERS OF ADMINISTRATION.
**I. L. R. 40 Calc. 50**

**WORDS AND PHRASES**—*concld.*

———— "using"—

*See* PENAL CODE (ACT XLV OF 1860) S. 471 . **I. L. R. 36 Mad. 392,**

———— "violence"—

*See* JURY, TRIAL BY.
**I. L. R. 40 Calc. 367**

**WORKMAN.**

*See* WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).
**I. L. R 35 All 143**

———— breach of contract by—

*See* WORKMEN S BREACH OF CONTRACT ACT (XIII OF 1859).
**I. L R. 35 All. 61**

**WORKMEN'S BREACH OF CONTRACT ACT (XIII OF 1859).**

1. ———— *Procedure—Special procedure under the Act not applicable to ordinary loans between master and workman. Held.* that the special procedure provided by Act XIII of 1859 for the recovery of money advanced in the circumstances therein described, is not applicable where money is advanced to a workman, not for the purpose of assisting him to complete a specific piece of work, but as an ordinary loan to be repaid out of the workman's wages *In the matter of Annsoon Sanyasi, I. L R 28 Mad. 37*, referred to. GIGA *v.* MUHAMMAD AMIN (1912)
**I. L. R. 35 All. 61**

2. ———— *Magistrate not competent to take proceedings under, unless moved by the employer* The provisions of Act XIII of 1859 can only be applied at the instance of the employer. A magistrate has no jurisdiction *suo motu* to pass orders under that Act as an alternative to taking action under the Indian Penal Code. CHUFDI *v.* MUHAMMAD ALI (1913)
**I. L. R. 35 All 143**

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